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LAW CLERK

**IN THE SUPREME COURT
OF THE
STATE OF IDAHO**

Vol. 8 of 4

GERALD E. WEITZ and CONSUELO J. WEITZ

**Plaintiffs/ Counter-defendants,
Appellants, Cross Respondents.**

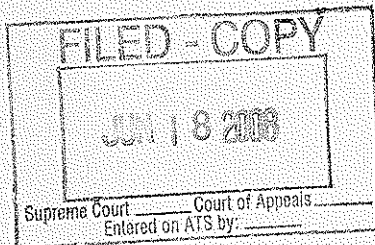
vs.

TODD A. GREEN and TONIA L. GREEN,

**Defendants/ Counter-plaintiffs
Respondents/ Cross Appellants.**

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HON. JOHN R. STEGNER, DISTRICT JUDGE

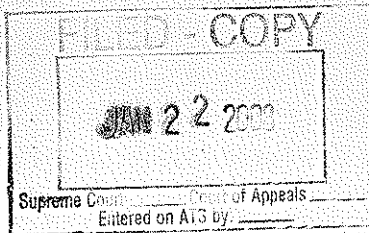


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ATTORNEY FOR RESPONDENT



Filed this ____ day of _____, 2007.

STEPHEN W. KENYON, CLERK

By _____
Deputy

**SUPREME COURT CASE NO. 33696
VOLUME VIII OF VIII VOLUMES**

33696

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Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)
v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

AFFIDAVIT OF TODD A. GREEN

IN RESPONSE TO PLAINTIFFS'
MOTION TO DISALLOW DEFENDANTS'
REQUEST FOR COSTS AND ATTORNEY
FEES

STATE OF IDAHO)
ss:)
County of Latah)

TODD A. GREEN, being first duly sworn upon oath, deposes and says:

1. I am one of the Defendants - Counterplaintiffs in this matter.
2. The information contained in this affidavit is based upon my own knowledge.

CASE NO CV 2004-80

2006 APR 19 PM 4:37

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AL DEPUTY

3. My wife Tonya and I are solely responsible to pay all of the attorney fees and costs incurred in this case.

4. I have read the April 17, 2006 affidavit of Charles A. Brown, and offer the following comments regarding that affidavit.

5. As I testified in court, prior to Weitz filing this lawsuit and before any lawyers became involved, I offered to sell the disputed property to Consuelo Weitz for the amount I had sold to my other purchasers. She refused. I then asked her if she would pay me what I paid for the property, and she again refused.

6. During settlement negotiations with Weitz in May, 2005 at a time when my attorney fees and costs exceeded \$45,000.00, I offered to walk away from the lawsuit and absorb all my legal fees and costs if Weitz would just dismiss their claims against us. They refused. If Weitz had accepted my offer to walk away, I would not have had sufficient funds from my settlement with Rogers to pay all my legal fees and costs incurred to that date. Since the time of that offer Weitz' continuation of this lawsuit has resulted in me having additional attorney fees and costs in excess of \$100,000.00.

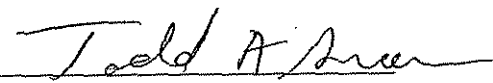
7. Mr. Brown's representations in his letters of August 2, 2005 and September 28, 2005 (attached to his affidavit of April 17, 2006) that his clients offered \$60,000.00 to buy the disputed property in September of 2004 are not correct. Weitz never offered to buy the disputed property for \$60,000.00 in 2004.

8. Attorney Brown's letter dated September 28, 2005 (attached to his April 17, 2006 affidavit) claims that I stated to Rockford Weitz in the fall of 2004 "that this dispute would have been settled at the mediation in September 2004 if Mr. Castle had not been involved". I never stated to Rockford Weitz or anyone in the fall of 2004, or any other time, "that this dispute would have

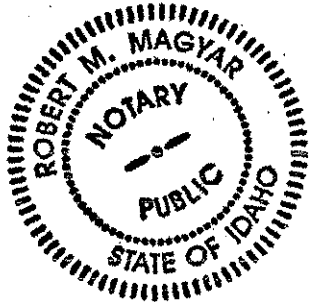
been settled at the mediation in September 2004 if Mr. Castle had not been involved". Weitz never even made a settlement proposal that satisfied me.

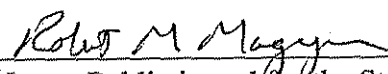
9. I have reviewed the July 25, 2005 letter from Andrew Schwam attached to attorney Brown's April 17, 2006 affidavit as Exhibit "A". I was also present at the settlement conference in which Rockford Weitz admitted that he had a "weak case". Rockford Weitz went on to say at the same meeting that if they had a strong case, they wouldn't even be having settlement discussions with us.

DATED this 18th day of April, 2006.


Todd A. Green

SUBSCRIBED AND SWORN TO before me this 18th day of April, 2006.



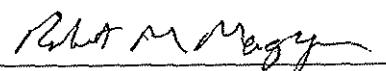

Notary Public in and for the State of Idaho,
residing in Moscow, Idaho.
My Commission Expires: 05-05-09

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

() Overnight Mail
(☒) U.S. Mail
() Facsimile
() Hand Delivery


Robert M. Magyar

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Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)
v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

AFFIDAVIT OF STEVEN R. SHOOK

IN RESPONSE TO PLAINTIFFS'
MOTION TO DISALLOW DEFENDANTS'
REQUEST FOR COSTS AND ATTORNEY
FEES

STATE OF IDAHO)
ss:)
County of Latah)

STEVEN R. SHOOK, being first duly sworn upon oath, deposes and says:

1. I am one of the Defendants – Counterplaintiffs in this matter.
2. The information contained in this affidavit is based upon my own knowledge.

CASE NO. CV-2004-80

2006 APR 19 PM 4:37

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DEPUTY

3. I have read the April 17, 2006 affidavit of Charles A. Brown, and offer the following comments regarding that affidavit.

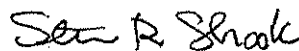
4. During settlement negotiations with Weitz in May, 2005 I offered to walk away from the lawsuit if Weitz would just dismiss their claims against us. They refused.

5. Mr. Brown's representations in his letters of August 2, 2005 and September 28, 2005 (attached to his affidavit of April 17, 2006) that his clients offered \$60,000.00 to buy the disputed property in September of 2004 are not correct. Weitz never offered to buy the disputed property for \$60,000.00 in 2004.

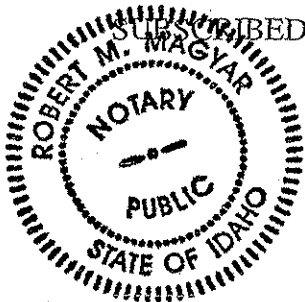
6. Attorney Brown's letter dated September 28, 2005 (attached to his April 17, 2006 affidavit) claims that I stated to Rockford Weitz in the fall of 2004 "that this dispute would have been settled at the mediation in September 2004 if Mr. Castle had not been involved". I never stated to Rockford Weitz or anyone in the fall of 2004, or any other time, "that this dispute would have been settled at the mediation in September 2004 if Mr. Castle had not been involved". Weitz never even made a settlement proposal that satisfied me.

7. I have reviewed the July 25, 2005 letter from Andrew Schwam attached to attorney Brown's April 17, 2006 affidavit as Exhibit "A". I was also present at the settlement conference in which Rockford Weitz admitted that he had a "weak case". Rockford Weitz went on to say at the same meeting that if they had a strong case, they wouldn't even be having settlement discussions with us.

DATED this 18th day of April, 2006.



Steven R. Shook



SUBSCRIBED AND SWORN TO before me this 18th day of April, 2006.

Robert M Magyar
Notary Public in and for the State of Idaho,
residing in Moscow, Idaho.
My Commission Expires: 05-05-09

CERTIFICATE OF SERVICE

Rm
I hereby certify that on this 18th day of April, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

- ☐ Overnight Mail
- ☒ U.S. Mail
- ☐ Facsimile
- ☐ Hand Delivery

Robert M Magyar
Robert M. Magyar

4:04PM

Received Time Apr 25 2006

CASE NO. CV 04-00080

2006 APR 25 AM 9:06

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *[Signature]* DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife)
and WEITZ & SONS, LLC, an)
Idaho limited liability)
company,)

Plaintiffs/
Counterdefendants,)

vs.)

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)
GREEN, husband and wife,)
STEVEN R. SHOOK and MARY E.)
SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C.)
CASTLE, and U.S. BANK N.A.,)

Defendants/
Counterplaintiffs.)

PLAINTIFFS' MOTION TO STRIKE
AFFIDAVITS OF TODD A. GREEN,
STEVEN R. SHOOK, AND
DANIAL T. CASTLE

COMENOW the plaintiffs/counterdefendants by and through their attorney of record,
Charles A. Brown, and move this Court, pursuant to I.R.C.P. 7(b)(3) and 12(f), to strike the

PLAINTIFF'S MOTION TO STRIKE
AFFIDAVITS OF TODD A. GREEN,
STEVEN R. SHOOK, AND DANIAL T.
CASTLE

affidavits of Todd A. Green, Steven R. Shook, and Danial T. Castle filed all in response to plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees.

Oral argument is requested.

DATED on this 24th day of April, 2006.

Charles A. Brown
Charles A. Brown
Attorney for Plaintiffs/Counterdefendants.

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile only
to: 208-892-8030 - Magyar
208-882-4190 - Schwam

✓ _____ sent by facsimile and mailed by
regular first class mail,
deposited in the United States
Post Office

_____ sent by Federal Express,
overnight delivery

_____ hand delivered

to: Robert M. Magyar
Attorney at Law
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 24th day of April, 2006.

Charles A. Brown

Received Time April 24 4:04 PM

CASE NO CV 04-00080

2006 APR 25 AM 9:06

CLERK OF DISTRICT COURT

LATAH COUNTY

BY [Signature] DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

Case No. CV 2004-000080.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

PLAINTIFFS' MOTION TO
SHORTEN TIME

COME NOW the plaintiffs/counterdefendants by and through their attorney of record,
Charles A. Brown, and move this Court, pursuant to I.R.C.P. 7(b)(3), for an order shortening time

for their Motion to Strike. The request to shorten time is made because the Motion to Strike needs to be brought to the Court's attention prior to the Court's hearing of the motions scheduled for tomorrow, April 25, 2006.

DATED on this 24th day of April, 2006.

Charles A. Brown
Charles A. Brown
Attorney for Plaintiffs/Counterdefendants.

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

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and deposited in the United States
Post Office

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to: 208-892-8030 - Magyar
208-882-4190 - Schwam

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to: Robert M. Magyar
Attorney at Law
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 24th day of April, 2006.

Charles A. Brown

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Date: April 25, 2006

Jodi M. Stordiau
Court Reporter
Recording: J:3/2006-04-25
Time: 9:00 A.M.

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Plaintiffs,)

vs.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE, and U.S.)
BANK, N.A.,)

Defendants.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE,)

Counter-Plaintiffs,)

vs.)

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Counter-Defendants.)

Case No. CV-04-00080

APPEARANCES:

Plaintiffs represented by counsel,
Charles Brown, Lewiston, ID

Defendants Todd Green and Steven R.
Shook present with counsel,
Andrew M. Schwam, Moscow, ID
Robert M. Magyar, Moscow, ID

=====

Subject of Proceedings: POST TRIAL MOTIONS

This being the time fixed pursuant to written notice for hearing of post trial motions in this case, Court noted the presence of counsel.

Mr. Schwam directed statements to the Court regarding the recent filings in this case. Court stated that Mr. Brown's Motion to Strike was not contained in the file. Court recessed at 9:04 A.M. to locate the Motion to Strike, reconvening at 9:06 A.M., Court and counsel being present as before. Court stated that he could adjourn this proceeding and take up the matter of attorney fees and costs at a later date if Mr. Brown feels he has been hindered by the late filing of the affidavits. Mr. Brown requested additional time to respond to the affidavits. Mr. Schwam argued in opposition to Mr. Brown's Motion to Strike. For reasons articulated on the record, the Court denied the defendants' motion to exclude the contents of Mr. Brown's affidavit and denied the plaintiffs' motion to strike the affidavits filed by the defendants. Court further stated that it would allow Mr. Brown until May 2, 2006, to file responses to defendants Shook, Green and Castle's affidavits and allowed Mr. Schwam until May 5, 2006, to reply to Mr. Brown's response. Court continued hearing of the issue of attorney fees and costs until 9:00 A.M. on May 9, 2006.

Mr. Schwam argued in support of the defendants' Motion to Clarify, Correct and Reconsider. Court inquired of Mr. Brown if he had objection to this Court deciding this case on a preponderance of the evidence. After lengthy colloquy with the Court, Mr. Brown indicated that he did not object. Court stated that it is inclined at this time to apply the preponderance standard in deciding this case in a parallel decision. Mr. Schwam resumed his argument in support of the defendants' Motion to Clarify, Correct and Reconsider. Mr. Brown argued in opposition to the motion.

Court recessed at 10:59 A.M., reconvening at 11:13 A.M., Court and counsel being present as before.

Mr. Brown resumed his argument in opposition to the defendants' Motion to Clarify, Correct and Reconsider. Mr. Schwam argued in rebuttal. Mr. Schwam's rebuttal argument was interrupted due to an evacuation of the building for an unrelated event.

Court recessed at 11:40 A.M.

APPROVED BY:


JOHN R. STEGNER
DISTRICT JUDGE

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
508-746-5586 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife)
and WEITZ & SONS, LLC, an)
Idaho limited liability)
company,)

Plaintiffs/
Counterdefendants,

VS.

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)
 GREEN, husband and wife,)
 STEVEN R. SHOOK and MARY E.)
 SILVERNALE SHOOK, DANIAL T.)
 CASTLE and CATHERINE C.)
 CASTLE, and U.S. BANK N.A.,)

Defendants/
Counterplaintiffs.

AFFIDAVIT OF CHARLES L. GRAHAM

IN SUPPORT OF PLAINTIFFS'
MOTION TO DISALLOW
DEFENDANT'S REQUEST FOR COSTS
AND ATTORNEY FEES

STATE OF IDAHO)
) ss.
County of Latah)

I, Charles L. Graham, being first duly sworn on my oath, depose and say:

1. That your affiant is competent to testify in this matter, that I am over the age of 18, and that I make the statements herein of my own personal knowledge and belief.

2. I am a licensed Idaho attorney. My office is at 414 South Jefferson, Moscow, Idaho.

3. I attended settlement negotiations in May 2005 between the Weitz family and the Greens and Shooks. Present were Consuelo Wietz, Rocky Weitz, Ron Landeck, Andrew Schwam, and Bob Magyar. Steve Shook and Todd Green were there. I don't remember if their wives were present.

4. I have reviewed the July 25, 2005 letter from Mr. Schwam, in which he asserts that Rocky Weitz stated in the course of the negotiations that his case was "weak." I have also reviewed affidavits from Mr. Shook and Mr. Green in which they say the same thing. I do not recall Mr. Weitz saying his case was weak and seriously doubt that he did. I remember a general statement by Mr. Weitz at the beginning of the negotiations to the effect that it made sense to settle the matter and that there were strengths and weaknesses on both sides.

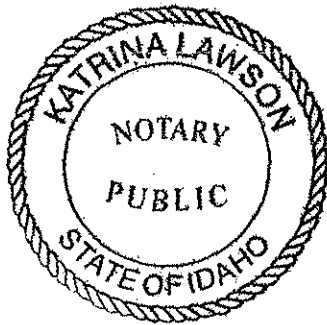
5. The affidavits of Mr. Green and Mr. Shook also claim that Rocky Weitz stated at the settlement negotiations "that if [Weitzes] had a strong case, [Weitzes] wouldn't even be having settlement discussions with [defendants]." Again, I don't remember Rocky Weitz making this statement and doubt that he did. The reason the Weitzes engaged in settlement negotiations is because it made sense to try to resolve the case before mounting attorney fees made it even more difficult.

DATED this 28th day of April, 2006.

Charles L. Graham
Charles L. Graham

SUBSCRIBED AND SWORN to before me on this 28th day of April, 2006.

(seal)



Katrina Lawson
NOTARY PUBLIC for Idaho
My commission expires: 8-25-2011

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile only
to: 208-882-1908 - Magyar
208-882-4190 - Schwam

_____ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

_____ sent by Federal Express,
overnight delivery

_____ hand delivered

To: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street #6
Moscow, ID 83843

On this _____ day of April, 2006.

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

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☒ hand delivered

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to: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 2nd day of May, 2006.

Charles A. Brown

1600

CASE NO. CV 2004-80

2006 MAY -2 PM 2:47

CLERK OF DISTRICT COURT
LATAH COUNTY

BY DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

Case No. CV 2004-000080

AFFIDAVIT OF CONSUELO J. WEITZ
IN SUPPORT OF PLAINTIFFS'
MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR COSTS
AND ATTORNEY FEES

STATE OF IDAHO)
: ss.
County of Nez Perce)

AFFIDAVIT OF CONSUELO J. WEITZ
IN SUPPORT OF PLAINTIFFS' MOTION
TO DISALLOW DEFENDANTS' REQUEST
FOR COSTS AND ATTORNEY FEES

I, Consuelo Weitz, being first duly sworn on my oath, depose and say:

1. These statements are based upon my own personal knowledge and belief.

2. I attended the mediation in September 2004, the fence dating in November 2004, and the settlement negotiations in May 2005.

3. The April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the July 25, 2005 letter from Mr. Schwam, claim that Rockford Weitz stated at the settlement negotiations in May 2005 that our side of the case was "weak." Rockford Weitz never stated at the settlement negotiations in May 2005 that our side of the case was "weak." However, Rockford Weitz did state at the settlement negotiations in May 2005 that litigation is inherently unpredictable and expensive and, thus, settlement provides the opportunity to save legal fees and devote those savings toward resolving the dispute in a mutually agreeable and amicable fashion.

4. The April 18, 2006 affidavits of Mr. Green and Mr. Shook claim that Rockford Weitz stated at the settlement negotiations in May 2005 "that if [plaintiffs] had a strong case, [plaintiffs] wouldn't even be having settlement discussions with [defendants]." Rockford Weitz never made such a statement at the settlement negotiations in May 2005.

5. During the mediation in September 2004, we offered to purchase the disputed property for \$60,000.00. The defendants rejected our offer. When the defendants opened negotiations with an offer to sell the disputed property for \$500,000.00, it was a slap in the face. Despite receiving what I considered to be unreasonable offers from the defendants, we kept an open mind and tried to explore creative ways to arrive at a settlement, such as purchasing the disputed property subject to restrictive covenants that would prohibit logging or erecting structures on the disputed property. Late in the afternoon, Judge Kerrick shared with us that the defendants had asked what he would offer, and he suggested that it might be appropriate to start with fair market value of the land. Notably Mr. Green purchased the disputed property for \$2,000.00 per acre and our offer of \$60,000.00 for the approximately 8.5 acres equaled just over \$7,000.00 per acre. At the end of the day, Mr. Schwam, the defendants' attorney, asserted that a six-figure offer would be required to purchase the disputed property.

6. The April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the April 19, 2006 affidavit of Mr. Castle, dispute the fact that we offered to purchase the disputed property for \$60,000.00 at the mediation in September 2004. We are happy to waive our

confidentiality rights to the mediation so Judge Kerrick can testify to this Court about the offers made by both parties. We have no fear of what Judge Kerrick will reveal.

7. Our offer to purchase the disputed property for \$60,000.00 was never rescinded and was again reiterated on September 23, 2005 in Mr. Brown's letter to Mr. Schwam. Although our legal fees were significant by that time, we did not seek to recoup those costs, but rather just wanted to put the entire situation behind us. The defendants continued to reject our offer.

8. I am puzzled by Mr. Green's assertion in his April 18, 2006 affidavit that he offered to sell me the disputed property for the amount that he had received from his other purchasers and then for what he had paid for the land with all of this occurring before lawyers were involved. If he is mischaracterizing the initial brief telephone conversations that started this entire dispute as legitimate offers that were "refused," that would be consistent with the defendants' pervasive misrepresentations that have plagued this entire case. In fact, Mr. Green made no offers to sell the disputed property to me or my family prior to the mediation in September 2004, when the defendants offered to sell it for \$500,000.00. It is also notable that it is simply illogical that Mr. Green could offer to sell land to the Weitz's that he had already sold as the time line in his affidavit indicates. Although that, too, is consistent with his keeping the land that he had already been paid for through a settlement that included costs to resurvey and prepare new land descriptions.

9. During the settlement negotiations in May 2005, we opened the negotiation by offering to pay \$5,000.00 per acre to Mr. Green and Mr. Shook for their portions of the disputed property, letting Mr. Castle keep his portion of the disputed property, and having all parties dismiss all claims in the lawsuit. Mr. Green and Mr. Shook responded to this initial offer by offering to sell their portions of the disputed property for a total of \$120,000.00 (\$60,000.00 for Mr. Green and \$60,000.00 for Mr. Shook), provided that we let Mr. Castle keep his portion of the disputed property and that all parties dismiss all claims in the lawsuit.

10. The April 18, 2006 affidavit of Mr. Green claims that, during the settlement negotiations in May 2005, he offered to walk away from the lawsuit and absorb all his legal fees and costs if we would just dismiss our claims against the defendants. The April 18, 2006 affidavit of Mr. Shook claims that, during the settlement negotiations in May 2005, he

offered to walk away from the lawsuit if the Weitzes would just dismiss their claims against the defendants. The offer described by Mr. Green and Mr. Shook was made and quickly withdrawn. Acceptance of this offer would have required us to give up all claims to the disputed property, including any access rights. Moreover, their offer did not include Mr. Castle, which left us open to further litigation, and we were not comfortable being left without a complete resolution of the case. Mr. Green and Mr. Shook withdrew the offer quickly and negotiations continued with a focus on defendants owning the property subject to usage restrictions for various terms of years and plaintiffs having limited access rights. Mr. Green and Mr. Shook wanted \$30,000.00 each to agree to restrict their ability to erect structures and cut timber on the property for 50 years or \$20,000.00 each to apply the same restrictions for 20 years.

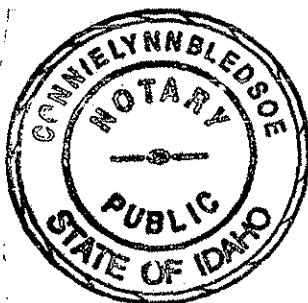
11. We have bent over backwards to try and settle this case. Our bona fide offers have been rejected by the defendants. Rather than work with us to draw up a mutually agreeable settlement, the defendants have been more interested in alleging that the saplings that were removed were worth tens of thousands of dollars, and we were going to be fully liable for all attorney fees. We had no choice but to proceed to trial.

DATED on this 27 day of April, 2006.

Consuelo J. Weitz
Consuelo J. Weitz

SUBSCRIBED AND SWORN to before me on this 27th day of April, 2006.

(SEAL)



Connie Lynn Bledsoe
Notary Public for Idaho
Residing at: Orfino
My commission expires on: October 22, 2011

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile, mailed by
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208-882-4190 - Schwam

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to: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 2nd day of ^{May}~~April~~, 2006.

Charles A. Brown

1605

CASE NO. CV 2004-80

2006 MAY -2 PM 2:47

CLERK OF DISTRICT COURT
LATAH COUNTY

BY DE DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

Case No. CV 2004-000080

AFFIDAVIT OF ROCKFORD WEITZ

IN SUPPORT OF PLAINTIFFS'
MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR COSTS
AND ATTORNEY FEES

STATE OF IDAHO)

: ss.

County of Nez Perce)

AFFIDAVIT OF ROCKFORD WEITZ
IN SUPPORT OF PLAINTIFFS' MOTION
TO DISALLOW DEFENDANTS' REQUEST
FOR COSTS AND ATTORNEY FEES

I, Rockford Weitz, being first duly sworn on my oath, depose and say:

1. These statements are based upon my own personal knowledge and belief.
2. I attended a significant portion of the mediation in September 2004, the fence dating in November 2004, and the settlement negotiations in May 2005.
3. I have reviewed the letters attached to the April 17, 2006 affidavit of Mr. Brown, the April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the April 19, 2006 affidavit of Mr. Castle.
4. The April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the July 25, 2005 letter from Mr. Schwam, claim that I stated at the settlement negotiations in May 2005 that our side of the case was "weak." I never stated at the settlement negotiations in May 2005, or at any other time, that our side of the case was "weak." However, I did state at the settlement negotiations in May 2005 that litigation is inherently unpredictable and expensive and, thus, settlement provides the opportunity to save legal fees and devote those savings toward resolving the dispute in a mutually agreeable and amicable fashion.
5. The April 18, 2006 affidavits of Mr. Green and Mr. Shook claim that I stated at the settlement negotiations in May 2005 "that if [plaintiffs] had a strong case, [plaintiffs] wouldn't even be having settlement discussions with [defendants]." I never made such a statement at the settlement negotiations in May 2005 or at any other time.
6. During the mediation in September 2004, we offered to purchase the disputed property for \$60,000.00. The defendants rejected our offer. When the defendants opened negotiations with an offer to sell the disputed property for \$500,000.00, it was a slap in the face. Despite receiving what I considered to be unreasonable offers from the defendants, we kept an open mind and tried to explore creative ways to arrive at a settlement, such as purchasing the disputed property subject to restrictive covenants that would prohibit logging or erecting structures on the disputed property.
7. The April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the April 19, 2006 affidavit of Mr. Castle, dispute the fact that we offered to purchase the disputed property for \$60,000.00 at the mediation in September 2004. We are happy to waive our confidentiality rights to the mediation so Judge Kerrick can testify to this Court about the offers made by both parties. We have no fear of what Judge Kerrick will reveal.

8. Our offer to purchase the disputed property for \$60,000.00 was never rescinded and was again reiterated on September 23, 2005 in Mr. Brown's letter to Mr. Schwam. Although our legal fees were significant by that time, we did not seek to recoup those costs, but rather just wanted to put the entire situation behind us. The defendants continued to reject our offer.

9. Mr. Green, Mr. Shook, Penny Morgan, Harold Osborne, Gerald Weitz, Consuelo Weitz, and I attended the fence dating in November 2004. Prior to the felling of each tree for fence dating purposes, we asked Mr. Green and Mr. Shook for permission to fell the trees. At their request, we refrained from felling any trees on Mr. Castle's portion of the disputed property. We wanted to be accommodating and to not inflame the dispute. During the fence dating, both Mr. Green and Mr. Shook told me that our dispute would have been settled at the mediation in September 2004 if Mr. Castle had not been involved. They seemed embarrassed by the behavior of their side at the mediation.

10. During the settlement negotiations in May 2005, we opened the negotiation by offering to pay \$5,000.00 per acre to Mr. Green and Mr. Shook for their portions of the disputed property, letting Mr. Castle keep his portion of the disputed property, and having all parties dismiss all claims in the lawsuit. Mr. Green and Mr. Shook responded to this initial offer by offering to sell their portions of the disputed property for a total of \$120,000.00 (\$60,000.00 for Mr. Green and \$60,000.00 for Mr. Shook), provided that we let Mr. Castle keep his portion of the disputed property and that all parties dismiss all claims in the lawsuit.

11. The April 18, 2006 affidavit of Mr. Green claims that, during the settlement negotiations in May 2005, he offered to walk away from the lawsuit and absorb all his legal fees and costs if the Weitzes would just dismiss their claims against the defendants. The April 18, 2006 affidavit of Mr. Shook claims that, during the settlement negotiations in May 2005, he offered to walk away from the lawsuit if the Weitzes would just dismiss their claims against the defendants. The offer described by Mr. Green and Mr. Shook was made and quickly withdrawn. Acceptance of this offer would have required us to give up all claims to the disputed property, including any access rights. Moreover, their offer did not include Mr. Castle, which left us open to further litigation, and we were not comfortable being left without a complete resolution of the case. Mr. Green and Mr. Shook withdrew the offer quickly and negotiations continued with a focus on defendants owning the property subject to usage restrictions for

AFFIDAVIT OF ROCKFORD WEITZ
IN SUPPORT OF PLAINTIFFS' MOTION
TO DISALLOW DEFENDANTS' REQUEST
FOR COSTS AND ATTORNEY FEES

various terms of years and plaintiffs having limited access rights. Mr. Green and Mr. Shook wanted \$30,000.00 each to agree to restrict their ability to erect structures and cut timber on the property for 50 years or \$20,000.00 each to apply the same restrictions for 20 years.

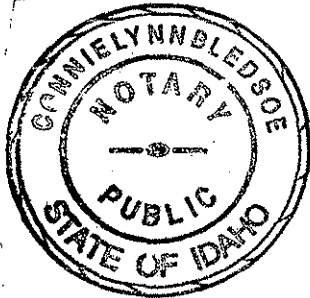
12. We have bent over backwards to try and settle this case. Our bona fide offers have been rejected by the defendants. Rather than work with us to draw up a mutually agreeable settlement, the defendants have been more interested in alleging that the saplings that were removed were worth tens of thousands of dollars, and we were going to be fully liable for all attorney fees. We had no choice but to proceed to trial.

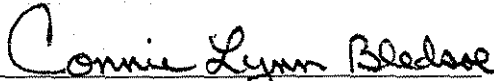
DATED on this 27th day of April, 2006.


Rockford Weitz

SUBSCRIBED AND SWORN to before me on this 27th day of April, 2006.

(SEAL)




Notary Public for Idaho
Residing at: Crofton
My commission expires on: October 22, 2011

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

☒ hand delivered

_____ sent by facsimile only
to: 208-882-1908 - Magyar
208-882-4190 - Schwam

_____ sent by Federal Express,
overnight delivery

to: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 2nd day of May, 2006.

Charles A. Brown

CASE NO. CV 2004-88

2006 MAY -2 PM 2:47

CLERK OF DISTRICT COURT
LATAH COUNTY

BY DL DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife)
and WEITZ & SONS, LLC, an)
Idaho limited liability)
company,)

Plaintiffs/)
Counterdefendants,)

vs.)

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)
GREEN, husband and wife,)
STEVEN R. SHOOK and MARY E.)
SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C.)
CASTLE, and U.S. BANK N.A.,)

Defendants/)
Counterplaintiffs.)

AFFIDAVIT OF RONALD J. LANDECK

IN SUPPORT OF PLAINTIFFS'
MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR COSTS
AND ATTORNEY FEES

STATE OF IDAHO)
: ss.
County of Latah)

Charles A. Brown, Esq.

P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1611

I, Ronald J. Landeck, being first duly sworn on my oath, depose and say:

1. That your affiant is competent to testify in this matter, that I am over the age of 18, and that I make the statements herein of my own personal knowledge and belief.
2. I am a duly licensed attorney in the State of Idaho and my practice is located at 414 South Jefferson, Moscow, Idaho.
3. I was the attorney for the above-named plaintiffs in the above-entitled matter until May 31, 2005.
4. Prior to filing the plaintiffs' complaint in February 2004, I visited the property and conducted extensive factual and legal research to determine the viability of the plaintiffs' claims. In my professional opinion, the plaintiffs' complaint presented bona fide claims.
5. I attended the mediation in September 2004 and the settlement negotiations in May 2005. I was present with the Weitzes when they interacted with the defendants during the September 2004 mediation and the May 2005 settlement negotiations.
6. I have reviewed the letters attached to the April 17, 2006 affidavit of Mr. Brown, the April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the April 19, 2006 affidavit of Mr. Castle.
7. The April 18, 2006 affidavits of Mr. Green and Mr. Shook, and the July 25, 2005 letter from Mr. Schwam, claim that Rockford Weitz stated at the settlement negotiations in May 2005 that his side of the case was "weak." I have no recollection of Rockford Weitz stating at the settlement negotiations in May 2005 that his side of the case was "weak." Such a statement would not be consistent with any statements made by Rockford Weitz, Consuelo Weitz, or their counsel during the May 2005 settlement negotiations, and I am convinced the statement was not made.
8. The April 18, 2006 affidavits of Mr. Green and Mr. Shook claim that Rockford Weitz stated at the settlement negotiations in May 2005 "that if [plaintiffs] had a strong case, [plaintiffs] wouldn't even be having settlement discussions with [defendants]." Again, I have no recollection that Rockford Weitz made such a statement at the settlement negotiations in May 2005, as this was not the plaintiffs' position and would not be consistent with all other

statements made by Rockford Weitz during the May 2005 settlement negotiations. I am convinced the statement was not made.

9. The September 2004 mediation lasted most of a day. The defendants opened negotiations with an offer to sell the disputed property for \$500,000.00. Despite receiving what I considered to be unreasonable offers from the defendants, the Weitzes kept an open mind and tried to explore creative ways to arrive at a settlement, such as purchasing the disputed property subject to restrictive covenants that would prohibit logging or erecting structures on the disputed property. Various offers were made by the Weitzes during the day, with their final offer being in the range of \$60,000.00, as I recall, to purchase the disputed property.

10. During the settlement negotiations in May 2005, the Weitzes opened the negotiation by offering to pay \$5,000.00 per acre to Mr. Green and Mr. Shook for their portions of the disputed property, letting Mr. Castle keep his portion of the disputed property, and having all parties dismiss all claims in the lawsuit. I recall that Mr. Green and Mr. Shook responded to this initial offer by offering to sell their portions of the disputed property for a total of \$120,000.00, provided that the Weitzes let Mr. Castle keep his portion of the disputed property and that all parties dismiss all claims in the lawsuit.

11. The April 18, 2006 affidavit of Mr. Green claims that, during the settlement negotiations in May 2005, he offered to walk away from the lawsuit and absorb all his legal fees and costs if the Weitzes would just dismiss their claims against the defendants. The April 18, 2006 affidavit of Mr. Shook claims that, during the settlement negotiations in May 2005, he offered to walk away from the lawsuit if the Weitzes would just dismiss their claims against the defendants. I believe the offer described by Messrs. Green and Shook was made and quickly withdrawn. Acceptance of this offer by the Weitzes would have required them to give up all claims to the disputed property, including any access rights. Moreover, I recall that their offer did not include Mr. Castle, which left the Weitzes open to further litigation, and the Weitzes were not comfortable being left without a complete resolution of the case. Messrs. Green and Shook withdrew the offer quickly and negotiations continued with a focus on defendants owning the property subject to usage restrictions for various terms of years and plaintiffs having limited access rights. Messrs. Green and Shook wanted \$30,000.00 each to agree to restrict their ability

to erect structures and cut timber on the property for 50 years or \$20,000.00 each to apply the same restrictions for 20 years.

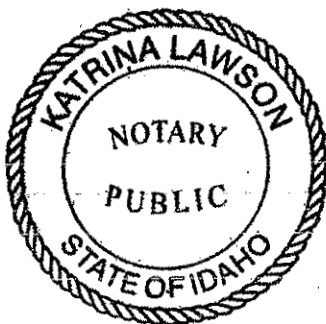
DATED on this 27 day of April, 2006.

Ronald J. Landeck
Ronald J. Landeck

SUBSCRIBED AND SWORN to before me on this 27th day of April, 2006.

Kat Jansa
Notary Public for Idaho
My commission expires on:
8-25-2011

(SEAL)



I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile only
to: 208-882-1908 - Magyar
208-882-4190 - Schwam

_____ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

_____ sent by Federal Express,
overnight delivery

☒ hand delivered

to: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 2nd day of ^{May}~~April~~, 2006.

Charles A. Brown

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife, and WEITZ
& SONS, LLC, an Idaho limited liability
company,

Plaintiffs/Counterdefendants,

v.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK
and MARY E. SILVERNALE SHOOK,
DANIAL T. CASTLE and CATHERINE
C. CASTLE, and U.S. BANK N.A.,

Defendants/Counterplaintiffs.

Case No. CV-04-000080

AFFIDAVIT OF STEVEN R. SHOOK

STATE OF IDAHO)

ss:

County of Latah)

STEVEN R. SHOOK, being first duly sworn upon oath, deposes and says:

1. I am one of the Defendants – Counterplaintiffs in this matter.
2. The information contained in this affidavit is based upon my own knowledge.

CASE NO CV 2004-80

2006 MAY -5 PM 2:42

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA DEPUTY

3. I was present throughout the May 2005 settlement negotiations which involved multiple meetings on more than one day.

4. Rockford Weitz has obviously forgotten his opening remarks made on the last day we met. On that day Rockford Weitz acted as spokesman for the Weitz side. We were seated at a long table with Mr. Green, our attorneys and me on one side and Rockford Weitz and one of the Weitz attorneys next to him with his mother and another attorney at the end of the table. Rockford Weitz opened the meeting with words spoken in soft tones. His opening remarks included words that were approximately as follows: "We realize we have a weak case. We would not be here if we didn't." Since everyone in the room already knew it, Mr. Weitz's acknowledgment of a weak case probably would have helped the negotiations but the second part made me think that I might be foolish to be offering concessions when Weitz would not be doing the same if they had the strong case. The first time after this that I and Todd Green were alone with our lawyers, we discussed these feelings and ultimately we continued negotiating.

5. Well into the negotiations but not at the last meeting Mr. Schwam conveyed our offer to end the matter with both sides dropping all their claims and no money being paid to us. This offer was for all of us including the Castles and the Weitz were told this. Weitz never accepted this offer and instead rejected it by making counteroffers. When this offer was made it included letting Weitz continue to recreate on the land but they were informed that the Castles would allow recreation but would not want motorized vehicles on their portion.

6. During the May 2005 negotiations Mrs. Weitz would not consider any proposal unless it gave her all of the land. She never offered to let Castles keep their land. At one point during the May negotiations, she stated that if she did not own the land, she would not use it. Todd Green and I suggested that letting Castles keep their land might help reach a settlement. At one point Todd and I offered to sell our land and let Castles keep theirs but our offer was not

accepted. During the May negotiations Rockford Weitz said that any settlement had to include the Castles land.

7. It is not correct that Weitz offered \$60,000.00 (\$7001.16 per acre) in September 2004. In fact they were still offering less than this when they opened the May 2005 negotiations with an offer of \$5000.00 per acre. In their most recent affidavits they have admitted that they opened at \$5000.00 per acre in May 2005. Weitz did not offer \$60,000.00 (\$7001.16 per acre) until later in the May 2005 negotiations but my wife and I could not accept this because Weitz always refused to agree to refrain from logging and building on the land during our lifetime.

8. Any offer my wife and I made to sell our land to Weitz without restrictions was made for what we felt was a fair market price. We considered the fact that the land would immediately provide timber income. The price we set also considered our understanding that a timbered lot in the Nearing addition had recently sold for about \$60,000.00 per acre, as well as our understanding that Weitz was asking between \$12000.00 and \$15,000.00 per acre for bare crop land lots that they were selling. The lots Weitz were selling had much more limited views relative to the land in dispute. We offered to sell for much less if Weitz would agree not to log and/or build for 50 years but this was refused by their counteroffers.

9. The last sentence in Mr. Landecks' affidavit states "Messrs. Green and Shook wanted \$30,000.00 each to agree to restrict their ability to erect structures and cut timber on the property for 50 years or \$20,000.00 each to apply the same restrictions for 20 years." This is not correct. Offers to restrict uses all involved restricting Weitz's use if they received ownership. The restrictive covenants on my land restrict my logging of mature timber. More importantly, Weitz was well aware that I was upset that they would ever log the top of Moscow Mountain.

10. My wife and I were reasonable and made real efforts to settle this dispute even though I knew that the fence upon which Weitz based their claim did not exist in 2002 and had not existed for some time.

DATED this 5 day of May, 2006.

Steven R. Shook
STEVEN R. SHOOK

SUBSCRIBED AND SWORN TO before me this 5th day of May, 2005.



Stephen R. Bush
Notary Public for the State of Idaho,
residing in Moscow, Idaho.
My Commission Expires: July 21, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

- ☐ Overnight Mail
- ☒ U.S. Mail
- ☒ Facsimile
- ☐ Hand Delivery

Andrew Schwam
Andrew Schwam

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife, and WEITZ
& SONS, LLC, an Idaho limited liability
company,

Plaintiffs/Counterdefendants,

v.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK
and MARY E. SILVERNALE SHOOK,
DANIAL T. CASTLE and CATHERINE
C. CASTLE, and U.S. BANK N.A.,

Defendants/Counterplaintiffs.

Case No. CV-04-000080

AFFIDAVIT OF TODD A. GREEN

STATE OF IDAHO)

ss:

County of Latah)

TODD A. GREEN, being first duly sworn upon oath, deposes and says:

1. I am one of the Defendants – Counterplaintiffs in this matter.
2. The information contained in this affidavit is based upon my own knowledge.

CASE NO. CV 2004-86

2006 MAY -5 PM 2:42

CLERK OF DISTRICT COURT
LATAH COUNTY

BY DEPUTY

3. In paragraph 8 of Mrs. Weitz's latest affidavit (signed April 27, 2006) she disputes that I offered to sell her the land for the same price that I was offering it to others. But she admitted this in her Preliminary Injunction Hearing testimony found in the transcript at pages 224 and 225. These two pages are copied and highlighted below.

224

1 some fashion and ultimately to Mr. Green?

2 A. I know they lived -- I don't know where they
3 lived, but it was never on the property.

4 Q. And you did not know them?

5 A. I did not know them.

6 (DEFENSE CONFERS)

7 Q. (By Mr. Schwam) Did you have a telephone
8 conversation with Mr. Green after the blading took
9 place?

10 A. I believe so.

11 Q. And did you have a second telephone conversation
12 with him after the blading took place?

13 A. Yes.

14 Q. Did you have any occasion during either of those
15 conversations to discuss with him the price he paid for
16 the land that he purchased?

17 A. I believe that may have come up.

18 Q. And would I be correct that he told you that he
19 paid \$2,000 an acre for the land that is now in dispute?

20 A. Yes.

21 Q. And would I be correct that you said to him it
22 wasn't worth that?

23 A. No, he wouldn't be correct.

24 Q. What did you say to him?

25 A. I can't recall everything we said. He said

24 of 293

56 of 74 sheets

225

1 something to the effect of, that if we were to offer him
2 2,000 an acre it wouldn't be enough it would need to be
3 something like 4,000 an acre at which juncture, I said I
4 would be reluctant to pay that kind of money to buy my
5 own land back.

6 MR. SCHWAM: I have nothing further.

7 THE COURT: Redirect, Mr. Landeck?

8 MR. LANDECK: None, Your Honor.

9 EXAMINATION

10 BY THE COURT:

11 Q. Ms. Weitz, I'm confused by Exhibit N, page seven.

12 Do you have that in front of you?

13 A. I do.

14 Q. You indicated that that was to designate a
15 north-south line?

16 A. That's correct.

17 Q. And where on Exhibit 1, that's the survey, would
18 that north-south line be?

19 A. The north-south line that that was referring to
20 would have extended from the fence to the -- let's see,
21 it would come down this way. It would have started at
22 the fence, which was the boundary to our property and
23 all through the roads, the bench roads, that cut across
24 this property were signed similar to that, which marked
25 the line between my dad's property and our property. He

4. Also in paragraph 8 she says it would be illogical for me to offer to sell what I had already sold. She must be referring to the obvious wording error that was made in paragraph 5 of my last affidavit when it reads "for the amount I had sold to my other purchasers". The Court knows that my offer took place right after the blading and before I sold to anyone. I was just trying to make the point that I offered it to her at the same price I was asking of anyone and not a higher price.

5 I was present throughout the May 2005 settlement negotiations which involved meetings on more than one day.

6. Rockford Weitz must not remember the opening remarks he made on the last day we met. On that day Rockford Weitz acted as spokesman for the Weitz side. We were seated at a long table with Steve Shook, our attorneys and me on one side and Rockford Weitz and one of the Weitz attorneys next to him with his mother and the other attorney at the end of the table. Rockford Weitz spoke first. His remarks included words that were approximately as follows: "We realize we have a weak case. We wouldn't be here if we didn't." I already knew that Weitz felt they had problems with their case because at the previous meeting they said they were going to change their case. The part about not being here if their case wasn't weak really annoyed me. I was there trying to settle and I didn't have a weak case.

7. At the close of the trial in October when everyone was getting ready to leave, Dr. Gerald Weitz came up to Bob Magyar while I was standing nearby and said to Bob "The next time I get in trouble, I'm hiring you two. My wife is so stubborn". Dr. Weitz was stopped in mid-sentence by Rockford Weitz who said "Stop, don't say anymore dad." If Dr. Weitz had not gone along with his wife, I would not owe my lawyers over \$100,000.00.

8. On one occasion after meeting in private with Steve Shook and my attorneys we returned to the negotiating room. Mr. Schwam conveyed our offer to end the matter with both

sides dropping all their claims and no money being paid to us. This offer was for all of us including the Castles and the Weitz were told this. I could not settle without the Castles. It would do me no good because I had to pay to defend Castles' title. Weitz never accepted this offer and instead made a counteroffer so my offer was gone. When this offer was made it included letting Weitz continue to use the land but they were told that the Castles would not want motorized vehicles on their portion.

9. During the May 2005 negotiations Mrs. Weitz would not consider any proposal unless it gave her all of the land. She never offered to let Castles keep their land. At one point during the May negotiations, she stated that if she did not own the land, she would not use it. Steve and I suggested that letting Castles keep their land might help reach a settlement. At one point Steve Shook and I offered to sell our land and let Castles keep theirs but our offer was not accepted. Sometime during the May negotiations Rockford Weitz told us that any settlement had to include the Castles' land.

10. It is not correct that Weitz offered \$60,000.00 (\$7001.16 per acre) in September 2004. In fact they were still offering less than this when we started the May 2005 negotiations. At the start they offered \$5000.00 per acre. In their most recent affidavits they have admitted that they started at \$5000.00 per acre in May 2005. Weitz did not offer \$60,000.00 (\$7001.16 per acre) until later in the negotiations but I could not accept this because at such a price, I wanted Weitz to agree not to log or build for 50 years and they would not agree.

11. Any offer I made to sell the land to Weitz without restrictions was made for what I felt was a market price. I knew that Weitz would immediately log the land and earn back a good part of the price. The price I set was also based on my understanding that lots in the Nearing subdivision were selling for about \$60,000.00 per acre and my understanding that Weitz was asking about \$13,000.00 per acre for much bigger lots that they were selling.

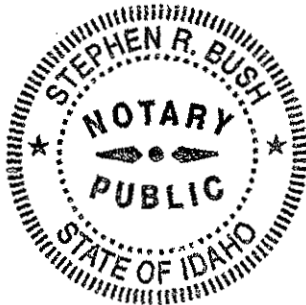
12. The last sentence in Mr. Landecks' affidavit states "Messrs. Green and Shook wanted \$30,000.00 each to agree to restrict their ability to erect structures and cut timber on the property for 50 years or \$20,000.00 each to apply the same restrictions for 20 years." This is not correct. Offers to restrict uses all involved restricting Weitz's use if they received ownership. The restrictive covenants on my land restrict my logging of mature timber. More importantly, Weitz was well aware that I was upset that they would ever log the top of Moscow Mountain.

13. I honestly tried to settle this dispute.

DATED this 5th day of May, 2006.

Todd A. Green
Todd A. Green

SUBSCRIBED AND SWORN TO before me this 5 day of May, 2005.



Stephen R. Bush
Notary Public for the State of Idaho,
Residing in Moscow, Idaho.
My Commission Expires: July 21, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

() Overnight Mail
(x) U.S. Mail
(x) Facsimile
() Hand Delivery

Andrew Schwam
Andrew Schwam

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

CASE NO. CV 2004-80

2006 MAY -5 PM 4:43

CLERK OF DISTRICT COURT
LATAH COUNTY
BY: MA DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife, and WEITZ
& SONS, LLC, an Idaho limited liability
company,

Plaintiffs/Counterdefendants,
v.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK
and MARY E. SILVERNALE SHOOK,
DANIAL T. CASTLE and CATHERINE
C. CASTLE, and U.S. BANK N.A.,

Defendants/Counterplaintiffs.

Case No. CV-04-000080

AFFIDAVIT OF DANIAL T. CASTLE

STATE OF IDAHO)
SS:
County of Latah)

DANIAL T. CASTLE, being first duly sworn upon oath, deposes and says:

1. I am one of the Defendants - Counterplaintiffs in this matter.
2. The information contained in this affidavit is based upon my own knowledge.
3. I was not physically present at the May 2005 settlement negotiations but was

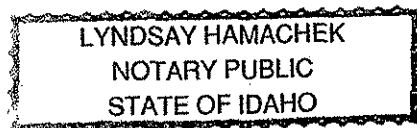
available by telephone as a result of advance arrangements.

4. Mr. Schwam and Mr. Magyar spoke to me before the May 2005 negotiations and knew that I would agree to a settlement that retained my ownership but did not include any financial compensation.
5. With regard to the opening \$500,000 offer, I was the main contributor to the need for such a large sum. I did not want to sell my property. I especially did not want to sell to someone who was going to log it and possibly build on it. I chose a price that would communicate that an outright unrestricted sale was not possible. After this there was some discussion of other ways to settle but they were not fruitful because Weitz seemed always to want ownership without restriction.

DATED this 5th day of May, 2006.

Danial T. Castle
DANIAL T. CASTLE

SUBSCRIBED AND SWORN TO before me this 5th day of May, 2005.



Lyndsay HamacheK
Notary Public for the State of Idaho,
residing in Moscow, Idaho.
My Commission Expires: July 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
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Andrew Schwam

Received Time May 8, 1:35 PM

CASE NO. CV 2004-80

2006 MAY -8 PM 1:37

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Da DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

Case No. CV 2004-000080

AFFIDAVIT OF GERALD E. WEITZ

AFFIDAVIT OF GERALD E WEITZ

1

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1628

STATE OF IDAHO)

: ss.

County of Latah)

I, GERALD E. WEITZ, being first duly sworn on my oath, depose and say:

1. These statements are based upon my own personal knowledge and belief and I am one of the plaintiffs above-named.

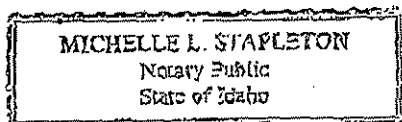
2. I have reviewed the Affidavit of Todd A. Green, dated May 5, 2006, which in paragraph 7 references an alleged conversation I had with Mr. Magyar. Immediately after the trial, Mr. Magyar and I did talk and Mr. Magyar showed me a great deal of professional courtesy and respect. Both of us exchanged pleasantries. The statements imputed to me by Mr. Green were simply not uttered by me.

DATED on this 8 day of May, 2006.

 Gerald E. Weitz
SUBSCRIBED AND SWORN to before me on this 8 day of May, 2006.

Michelle L. Stapleton
 Notary Public for Idaho
 Residing at: Mo Snow
 My commission expires on: 9-13-06

(SEAL)



Received Time May 1:35PM

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

✓ _____ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

_____ hand delivered

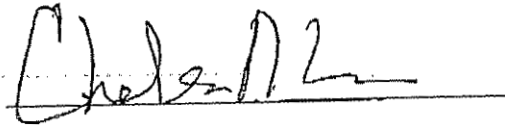
to: Robert M. Magyar
Magyar Law Firm
201 North Main Street
Moscow, ID 83843

_____ sent by facsimile only
to: 208-892-8030 - Magyar
208-882-4190 - Schwam

_____ sent by Federal Express,
overnight delivery

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 8th day of May, 2006.



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Date: May 9, 2006

Jodi M. Stordiau
Court Reporter
Recording: J:3/2006-05-09
Time: 9:04 A.M.

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Plaintiffs,)

vs.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE, and U.S.)
BANK, N.A.,)

Defendants.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE,)

Counter-Plaintiffs,)

vs.)

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Counter-Defendants.)

Case No. CV-04-00080

APPEARANCES:

Plaintiffs represented by counsel,
Charles Brown, Lewiston, ID

Defendants Todd Green and Steven R.
Shook present with counsel,
Andrew M. Schwam, Moscow, ID

Subject of Proceedings: **DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS**

This being the time set pursuant to order of the Court for hearing the defendants' motion for attorney fees and costs, Court noted the presence of counsel and the defendants.

Mr. Schwam informed the Court that he had two preliminary issues and presented argument in regard to the number of affidavits filed in this case. Mr. Schwam moved to withdraw all of the affidavits. Court directed remarks to Mr. Schwam. Mr. Schwam presented argument. Mr. Brown presented argument. Mr. Schwam presented further argument. Court informed counsel that he feels he should conduct further legal research on the issue of whether to utilize the affidavits.

Mr. Schwam presented argument in favor of the defendants' motion for attorney fees and costs.

Court recessed at 10:29 A.M.

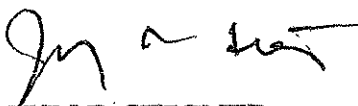
Court reconvened at 10:42 A.M., all being present in Court as before.

Mr. Brown presented argument in opposition to the defendants' motion for attorney fees and costs. Mr. Schwam presented rebuttal argument.

Court considered the motion fully submitted and informed counsel he will prepare a written decision in this matter.

Court recessed at 10:52 A.M.

APPROVED BY:


JOHN R. STEGNER
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Date: May 10, 2006

No
Court Reporter
No recording
Time: 10:47 A.M.

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Plaintiffs,)

vs.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE, and U.S.)
BANK, N.A.,)

Defendants.)

TODD A. GREEN and TONIA L.)
GREEN, husband and wife, STEVEN R.)
SHOOK and MARY E. SILVERNALE)
SHOOK, DANIAL T. CASTLE and)
CATHERINE C. CASTLE,)

Counter-Plaintiffs,)

vs.)

GERALD E. WEITZ and CONSUELO J.)
WEITZ, husband and wife, and WEITZ &)
SONS, LLC, and Idaho limited liability)
company,)

Counter-Defendants.)

Case No. CV-04-00080

APPEARANCES:

Plaintiffs represented by counsel,
Charles Brown, Lewiston, ID

Defendants Todd Green and Steven R.
Shook present with counsel,
Andrew M. Schwam, Moscow, ID
Robert M. Magyar, Moscow, ID

Subject of Proceedings: COUNSEL'S CONCERNS ABOUT EX PARTE COMMUNICATION
WITH LAW CLERK by telephone conference call

Terry Odenborg
Deputy Clerk

Court convened this case at the request of counsel with regard to the revelation made yesterday by Mr. Schwam, that Mr. Schwam had had what he thought was a candid conversation with this Court's current law clerk, Gretchen Stewart, regarding this case at the time of trial. Court noted the participation of counsel in this conference call.

Court stated that Gretchen Stewart was not employed as this Court's law clerk at the time this case was tried. Court indicated that it would provide counsel with Ms. Stewart's date of hire. Court stated that the gravamen of its conversation with counsel was that it would create a Chinese Wall between Ms. Stewart and this Court regarding the resolution of this case. Court stated that it did not learn until yesterday that Ms. Stewart had had conversation with Mr. Schwam in which he had shared with her confidences. The Court stated that it did not think that anything Ms. Stewart has done in this case to date was very substantial and assured counsel that she will have no future involvement in the case at all.

Colloquy was had between Court and counsel regarding the procedure normally followed by this Court's law clerks in preparation of memorandum decisions, that being that generally the law clerk prepares a draft memorandum and submits it to the Court for revisions and editing. In response to a concern raised by Mr. Brown, the Court stated that in this case this Court prepared the original memorandum decision. Court stated that it had drafted its own Memorandum Decision in this case, and although Ms. Stewart helped the Court look up and verify some dates and citations, she did not substantively influence the Court in the drafting of it.

Mr. Schwam stated that he first learned that Ms. Stewart was this Court's law clerk yesterday after the hearing conducted in this matter when one of his clients informed him that Ms. Stewart was entering and exiting the courtroom through the door that leads to this Court's chambers. Mr. Schwam stated that he then inquired of Deputy Clerk, Maureen Coleman, as to Ms. Stewart's identity and position and was informed that she was this Court's current law clerk. Mr. Schwam stated that he had had no conversations with Ms. Stewart since she had become employed here.

Court informed counsel that Ms. Stewart had been employed in an irregular fashion in that the person whom this Court had hired for the term of August 2005 through August 2006 had resigned the position shortly after she was hired. Gretchen Stewart started employment as this Court's law clerk on November 28, 2005.


Court stated that it had had a conversation with Ms. Stewart this morning and she had little recollection of what she and Mr. Schwam had spoken about. Court assured counsel that Ms. Stewart had little involvement in the preparation of its Memorandum Decision and had little recollection of conversation that had transpired between her and Mr. Schwam.

Court informed counsel that it would write a letter to them regarding this matter

and would construct a Chinese Wall between this Court and Ms. Stewart.

Court recessed at 10:55 A.M.

APPROVED BY:



JOHN R. STEGNER
DISTRICT JUDGE

CERTIFICATE OF SERVICE

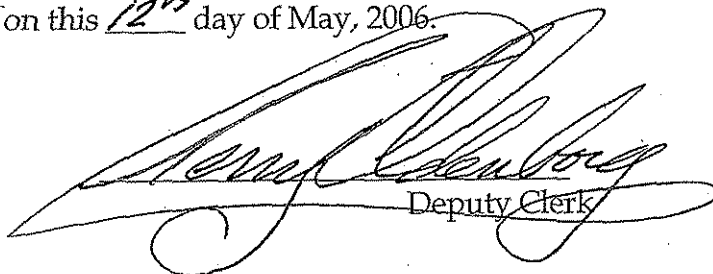
I do hereby certify that a full, true
complete and correct copy of the foregoing
COURT MINUTES was mailed to:

CHARLES A. BROWN
ATTORNEY AT LAW
P.O. BOX 1225
LEWISTON, ID 83501

ROBERT M. MAGYAR
ATTORNEY AT LAW
PO BOX 8074
MOSCOW, ID 83843

ANDREW SCHWAM
ATTORNEY AT LAW
514 SOUTH POLK STREET
MOSCOW, ID 83843

on this 12th day of May, 2006.


Deputy Clerk

CASE NO. CV-04-00080

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
2006 JUN 28 PM 4:07

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH
CLERK OF DISTRICT COURT
LATAH COUNTY

GERALD E. WEITZ and CONSUELO J. WEITZ,
husband and wife, and WEITZ & SONS, LLC,
an Idaho limited liability company,

Plaintiffs,

vs.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK and
MARY E. SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C. CASTLE,
and U.S. BANK, N.A.,

Defendants/Counter Plaintiffs.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK and
MARY E. SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C. CASTLE,

Counter-Plaintiffs,

vs.

GERALD E. WEITZ and CONSUELO J. WEITZ,
husband and wife, and WEITZ & SONS, LLC,
an Idaho limited liability company,

Counter-Defendants.

Case No. CV-04-00080

AMENDED¹
MEMORANDUM DECISION²

¹ This Amended Memorandum Decision supersedes and replaces this Court's Memorandum Decision which was filed January 9, 2006. This decision takes into account and is in response to Defendants/Counter-Plaintiffs' Motion to Clarify, Correct and Reconsider and Plaintiffs' response to that motion.

² This Court is aware that Idaho Rule of Civil Procedure 52(a) requires findings of fact and conclusions of law in all matters "tried upon the facts without a jury." This Memorandum Decision constitutes this Court's findings of fact and conclusions of law. Oftentimes, findings of facts and conclusions of law are set out separately and distinctly even though they are not always separate and distinct. Other times conclusions of law are set out after the findings of fact as if they somehow flow from the findings. However, it is sometimes necessary to ascertain the law applicable before determining the facts. This Court believes it preferable to intersperse findings of fact and conclusions of law (and not necessarily in that order) to make the decision and analysis more easily read and understood.

This case involves a boundary dispute in rural Latah County. The property in question constitutes a portion of what is commonly referred to as Moscow Mountain. The dispute involves two adjoining quarter sections of land. The property in dispute lies within the southeast quarter of Section 8, Township 40 North, Range 5 West Boise Meridian. Todd and Tonia Green purchased the quarter section in question on August 1, 2002. The quarter section to the north of the disputed property is owned together by Gerald and Consuelo Weitz and Weitz & Sons, LLC. Gerald and Consuelo Weitz, husband and wife, own the eastern half of the quarter section to the north of the disputed property. The western half of the quarter section is owned by Weitz & Sons, LLC. The members of Weitz & Sons, LLC, are Gerald and Consuelo Weitz and their two sons, Gerald Rockford Weitz and Dustin Fredrick Weitz. The Weitzes will be collectively referred to as the Weitz family in this decision. (Attached to this Memorandum Decision is a copy of Exhibit O which was admitted in evidence. The area in dispute has been highlighted in yellow on that Exhibit.)

The Greens, after purchasing the property, subdivided it into four parcels. Three of the four parcels border the Weitz family's quarter section and thus contain property which is in dispute. The Greens sold one of the four parcels to Danial and Catherine Castle (Tract 1 on Exhibit O). They sold another to Steven and Mary Shook (Tract 2 on Exhibit O). The third parcel impacted by this boundary dispute was retained by the Greens (Tract 4 on Exhibit O). The Castles, Shooks and Greens are all parties to this litigation. They all seek to quiet title to a portion of the disputed property.

Todd and Tonia Green purchased what they thought was a quarter section, or 160 acres, from the Rogers' Family Trust. The Greens agreed to pay \$2,000 per acre for the property. Prior to purchasing the property, Todd Green spent considerable time traversing the property. He had located a quarter section marker at the northeast corner of the property, which had been placed by the Idaho Department of Lands in 1988. The property purchased by the Greens contains a trail, sometimes referred to as a road, which runs generally east to west through the disputed property. The road was the subject of considerable testimony at

trial. Prior to the Greens' purchase in 2002, the trail was capable of handling, for much of its length, a four-wheel, all-terrain vehicle. For at least a year prior to the Greens' purchase of the property, the trail was partially blocked because a tree had fallen across it. The tree blocked any motorized vehicle from driving the length of the trail. In order to travel the length of the trail, motorcyclists and hikers created a detour by which they could bypass the tree that had fallen across the trail.

Following the purchase of the property, the Greens hired Ron Monson, a land surveyor, to subdivide their property. Mr. Monson began his work in August 2002. In the process of surveying, he hung surveyor's tape on the property demonstrating that he was in the process of surveying the property. As an apparent result of the surveyor's actions, the Weitz family sprang into action. Ed Weitz, a nephew of Gerald Weitz, went up and cut out the log that had fallen across the trail, thereby enabling motorized travel the length of the trail without detour. Gerald Weitz, the Weitz family patriarch, took his Caterpillar tractor to the property and on at least two different instances bladed the trail in such a way as to convert it from an overgrown trail to one which would allow a four-wheel-drive pickup truck to travel from one end to the other.

Todd Green, believing the property to be his and his wife's, telephoned Consuelo Weitz, the Weitz family matriarch, to find out why the trail had been bladed without his consultation or permission. Mrs. Weitz informed Mr. Green that she considered the property to be hers and that she did not need permission to do what she considered to be rightfully within her power to do. Mr. Green learned at that time that the Weitz family claimed ownership of the northernmost portion of the quarter section he and his wife had purchased. The claim of ownership extended from the northern boundary of the Greens' quarter section to an old fence line that ran essentially the width of the property in an east-west direction and would, if acknowledged as a boundary, result in a little more than eight acres being lopped off of the northern portion of the Greens' property.

The Weitz family claims ownership of the disputed property because of Consuelo

Weitz's family history and association with the property. Mrs. Weitz's father, Harold Schoepflin, and her grandfather, Fred Schoepflin, previously ran dairy cattle on the disputed property. It appears this was done until about 1975. Prior to that time the Schoepflins treated the disputed property as their own. They graded the trail in question at will and connected it with numerous other roads traversing their property to the north. They maintained the fence, which encroached on the Rogers' property. During the 1970's Homer Ferguson leased the Rogers' property from Inez Rogers, the Rogers' family matriarch, to run cattle on it. Mr. Ferguson testified that Mrs. Rogers told him in the mid-1970's that the fence, which borders the disputed property, constituted the boundary between the Schoepflin's property and the Rogers' property. However, Mrs. Rogers' son, Thomas Rogers, undermined the testimony attributed to his mother when he testified that he doubted his mother had ever seen the fence in question. He also testified his mother died in 2001 and he managed the property as the trustee for his family's trust following her death. He also testified he considered the property boundary to be the quarter section line, not the disputed fence.

After learning of the dispute regarding their property, Mr. and Mrs. Green made a claim against the Rogers' Family Trust for the loss the Greens maintained they suffered as a result of the warranty deed not conveying clear title to the disputed property. As a result of the Greens' claim, the Rogers' Family Trust reduced the purchase price of the quarter section Mr. and Mrs. Green purchased by \$46,247.16. However, in negotiating the sale of property to the Shooks and Castles, the Greens undertook an obligation to convey clear title to the disputed property and, in the event the Weitz family did not pursue a quiet title action to the disputed property, the Greens agreed to institute a quiet title action themselves. In addition, the Greens agreed to compensate the Shooks and the Castles for the loss of the disputed property in the event title was quieted in the Weitz family.

The Weitz family seeks to quiet title in the disputed property by asserting a claim of boundary by agreement. In order to establish a boundary by agreement, the Weitz family must establish two things by clear and convincing evidence. *See Luce v. Marble*, 142

Idaho 264, ___, 127 P.3d 167, 173-174 (2005) (citing *Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976)). First, they must prove an uncertain or disputed boundary involving adjacent properties; and second, they must prove a subsequent express or implied agreement fixing the boundary. *Cox v. Clanton*, 137 Idaho 492, 495, 50 P.3d 987, 990 (2002) (citing *Griffel v. Reynolds*, 136 Idaho 397, 400, 34 P.3d 1080, 1083 (2001)).

Clearly there exists in this case a disputed boundary involving adjacent properties. However, as to the express or implied agreement, the Weitz family has failed to make its case by clear and convincing evidence. In 1988, the Idaho Department of Lands put up a marker on the northeast corner of the Rogers' property. That boundary marker constituted notice that the true property line between the Weitz family's property and the Rogers' property was north of the fence in question. Thomas Rogers, the Rogers family's property manager, testified that the boundary was not the dilapidated fence, but rather the corner established in 1988 by the Idaho Department of Lands. The only testimony that the Rogers family agreed to the boundary was a thirty-year old statement attributed to Mrs. Rogers, who apparently had little familiarity with the property.

Todd Green, in trying to find property to purchase, located the corner that had been placed by the Idaho Department of Lands. The fence, which the Weitz family relies on, was, in 2002, for all intents and purposes, non-existent. In the summer of 2005, when this Court walked the length of the "fence," it would have been more descriptive to refer to it as the *remains* of a fence than to refer to it as a "fence." It must have been many years between the time this Court observed the "fence" and the time it served as a barrier to roaming cattle. As between the "fence" and the quarter section marker placed by the Idaho Department of Lands, the latter served as notice to the world where the true property boundary lay; the "fence" would not have constituted notice of anything to anyone. Consequently, the Weitz family's claim to a boundary by agreement fails.

The next issue that must be addressed is the claim by the Weitz family to a prescriptive

easement to the trail that traverses the disputed property. A prescriptive easement must also be proven by clear and convincing evidence. *Hodgins v. Sales*, 139 Idaho 225, 232, 76 P.3d 969, 976 (2003). In order to prove a prescriptive easement, the Weitz family must demonstrate that its use of the trail was as follows:

- (1) open and notorious,
- (2) continuous and uninterrupted,
- (3) adverse and under a claim of right,
- (4) with the actual or imputed knowledge of the owner of the servient tenement, and
- (5) for the statutory period of five years.

Marshall v. Blair, 130 Idaho 675, 680, 946 P.2d 975, 980 (1997) (citing *West v. Smith*, 95 Idaho 550, 557, 511 P.2d 1326, 1333 (1973); I.C. § 5-203).

While it may be true that the trail in question appears in the Weitz family's exhibits to be part of a "seamless web" of roads on the Weitz family's property, it did not appear to be so at the time the Greens bought the disputed property. In 2002, when the Greens purchased the property, the trail looked like a footpath or a trail for a motorcycle or a four-wheel, all-terrain vehicle (except where the log had fallen across the pathway and necessitated passage by some other means). Prior to the Greens' purchase, the trail had been most recently bladed by Mrs. Weitz's father around 1994. For the eight years prior to the Greens' purchase, the trail had fallen into disuse. It did not appear, on the ground, to be part of a seamless web of roadways extending onto the Weitz family's property.

Prior to the Greens' purchase, the trail had not been used by the Weitz family in a continuous fashion for the required five years. Although there was evidence the Weitz family and their friends used the trail periodically during the period in question, the use was not continuous. Consequently, the Weitz family has failed to establish the elements necessary to establish a prescriptive easement to the trail.

An additional impediment to the Weitz family establishing a prescriptive easement to the road is that they cannot establish exclusive use of that road. In *Simmons v. Perkins*, 63

Idaho 136, 118 P.2d 740 (1941), the Idaho Supreme Court held: "[a]n individual using land as a road in common with the public cannot acquire a prescriptive right of way against the owner." *Id.* at 144, 118 P.2d at 744. Numerous individuals, unconnected with the Weitz family, used the trail during the time in question. Because it is necessary to establish exclusive use in order to prove a prescriptive easement, this is yet another reason why the Weitz family's claim of a prescriptive easement must fail.

The next issue that needs to be addressed is whether the Greens were bona fide purchasers. See Plaintiffs' Memorandum in Support of Claim that Defendants Are Not Bona Fide Purchasers for Value. "One who relies for protection upon the doctrine of being a bona fide purchaser must show that at the time of the purchase he paid a valuable consideration and upon the belief and validity of the vendor's claim of title without notice, actual or constructive, of any outstanding adverse right of another." *Imig v. McDonald*, 77 Idaho 314, 318, 291 P.2d 852, 855 (1955) (citations omitted). This Court, having had the opportunity to physically walk the fence line and hear the testimony at trial, is persuaded that the Greens were bona fide purchasers of the disputed property. Much testimony was elicited regarding the "fence." To characterize the remnants of what once constituted a fence as a fence is a misnomer. The barbed wire has not held cattle for thirty years. The "fence" has lain on its side for a significant number of years, if not decades. It is more accurately referred to as the remains of a fence, not as a fence. The trail on the property was really nothing more than a footpath. It would not have put a reasonably observant purchaser on notice that someone other than the deeded owner of the property claimed title to the disputed property. The Weitz family also made much of an old shack on the disputed property as well as a sign placed on the property by either Mrs. Weitz's father or grandfather. The shack is a dilapidated structure that has not been used in decades. To the extent it was seen prior to purchase, it would not have put a purchaser on notice of a contrary claim to ownership. Likewise the sign placed on a tree with the word "LINE" emblazoned on it would not have put a bona fide purchaser on notice that the roughly eight acres in question were claimed by

another. Consequently, the Greens qualify as bona fide purchasers of the property.

The Weitz family also contends that the Greens should be estopped from asserting title to the disputed property. The basis for this assertion is the fact that the Greens made a claim against the Rogers' Family Trust and effected a reduction in price of the quarter section in question because of the cloud on the title to the disputed property. The Weitz family argues two forms of estoppel: equitable estoppel and quasi-estoppel.

In order to establish equitable estoppel, the Weitz family must establish the following: (1) a false representation or concealment of a material fact made with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not and could not have discovered the truth; (3) an intent that the misrepresentation or concealment be relied upon; and (4) that the party asserting estoppel relied on the misrepresentation or concealment to his or her prejudice. *Willig v. State, Dept. of Health & Welfare*, 127 Idaho 259, 261, 899 P.2d 969, 971 (1995) (citations omitted).

Equitable estoppel does not apply to these facts. The Greens have not engaged in either a false representation or a concealment of a material fact. The fact that the Rogers' Family Trust reduced the purchase price to the Greens as a result of this dispute has never been concealed from the Weitz family nor has there been a false representation. Further, there is no prejudice which has inured to the Weitz family, even if one were to assume for purposes of argument that there has been a concealment of a material fact. The Weitz family has not changed its position in reliance on anything the Greens have done. They continue to maintain, as they did prior to the Greens' settlement with the Rogers Family Trust, that they are the rightful owners of the property. There simply is nothing in these facts to establish equitable estoppel as a basis for the Weitz family to challenge the Greens' purchase of the disputed property.

The Weitz family also argues that quasi-estoppel should prevent the Greens from claiming ownership to the disputed property. "The doctrine of quasi-estoppel may be invoked against a person asserting a right inconsistent with a position previously taken by

him, with knowledge of the facts and his rights, to the detriment of the person seeking to apply the doctrine." *Young v. Idaho Dep't of Law Enforcement*, 123 Idaho 870, 875, 853 P.2d 615, 620 (Ct. App. 1993). "Quasi-estoppel does not require a false representation. Rather, it is a doctrine designed to prevent one party from gaining an unconscionable advantage by changing positions." *Record Steel & Const., Inc. v. Martel Const., Inc.*, 129 Idaho 288, 292, 923 P.2d 995, 999 (Ct. App. 1996) (citations omitted).

The essence of quasi-estoppel is unconscionability. This Court is unpersuaded that the actions of the Greens, in dealing with this dispute, should be construed as unconscionable. While it is true that the Greens asserted a claim against the Rogers' Family Trust and obtained a significant reduction in the purchase price for the property because of the cloud on the title, the Rogers' Family Trust had an unqualified obligation to defend the Greens' title to the property, having given the Greens a warranty deed. The Greens did nothing more than assert their rights. While it may appear to some that the Greens have obtained a windfall by being able to obtain a reduction of the price of the property and, at the same time, get all they bargained for, it should be remembered that the Greens have a contractual obligation to defend the titles conveyed to the Shooks and Castles and, if unsuccessful, compensate the Shooks and the Castles for the corresponding reduction in the value of their property. The Rogers' Family Trust, in an effort to control its risk, essentially assigned its obligation to defend the Greens' title to the Greens for a reduction in the price of the property. The Greens have assumed that risk and have not engaged in any unconscionable behavior by undertaking that risk. It may be that the Greens' decision was a good move from a business standpoint; however, that is not the stuff of which unconscionability is made. Consequently, this Court concludes that quasi-estoppel should not prevent the Greens from claiming title to the property.

The Castles, Greens, and Shooks also claim that Mr. and Mrs. Weitz owe them damages for timber trespass. The basis for this claim is as follows. After Mr. And Mrs. Weitz learned that the Greens had obtained a settlement from the Rogers' Family Trust, they hired

an arborist, Dana Townsend, to replace the downed fence with one that would create a barrier between their perceived property line and the property line of the Castles, Greens and Shooks. Mr. Townsend cut down various trees of small diameter in order to build a new fence. It is these trees that were downed, at the behest of Mr. and Mrs. Weitz, for which the Castles, Greens and Shooks seek compensation. While there was testimony from Mr. Shook, one of the property owners, that Mr. Townsend in effect created a "utility easement" across the property, that testimony was an overstatement of the damage to the property. Dean Balcamp, a real estate agent, testified that the value of the properties had not been impaired by Mr. Townsend's timber trespass. Mr. Balcamp's testimony was far more credible than Mr. Shook's as to the damage to the properties. While this Court concludes that the marketability of the parcels owned by the Castles, Greens and Shooks has not been diminished by the arborist, that is not the measure of damages. "In an action for timber trespass, the measure of actual damages is based upon the amount of the trees taken and the market value of the trees in that area at the time of the taking." *Bumgarner v. Bumgarner*, 124 Idaho 629, 640, 862 P.2d 321, 332 (Ct. App. 1993). While the trees cut were not marketable in the sense that they could be milled and cut into dimension lumber (with the exception of one tree), they nevertheless had some market value. The Court concludes that the Castles, Greens and Shooks should each receive \$500.00 for the market value of the timber trespass by Mr. Townsend at the request of Mr. and Mrs. Weitz.

The Castles, Greens and Shooks also seek treble damages for the timber trespass. "Although not stated in the statute, I.C. § 6-202 applies only where the alleged trespass is shown to have been willful and intentional." *Bumgarner v. Bumgarner*, 124 Idaho 629, 639, 862 P.2d 321, 331 (Ct. App. 1993) (citations omitted). In its original Memorandum Decision, this Court concluded that the trespass undertaken at the behest by Mr. and Mrs. Weitz was not willful and intentional. The Castles, Greens and Shooks have asked this Court to review this conclusion and alter it. Defendants/Counter-Plaintiffs' Brief In Support Of Motion To Clarify, Correct And Reconsider; In Support Of The Request For Attorney Fees And In Support Of

The Memorandum Of Costs (filed April 3, 2006). In support of the motion to reconsider this Court has been provided with various excerpts of depositions and trial testimony which establishes that Mrs. Weitz never received definitive word that the Weitz family's dispute with the Greens had been resolved. However, the gravamen of the testimony was that it appeared the dispute would go away. Mrs. Weitz testified at trial that she was advised by her lawyer, Mr. Landeck, "[t]hat he anticipated settlement with the Rogers and he looked for the whole problem to just go away." (Trial testimony of Consuelo Weitz, p. 38, 11. 2-4). Ron Landeck, former counsel to the Weitz family, testified at his deposition that he advised Mrs. Weitz that the "problem may go away." (Deposition of Ron Landeck, p. 43, line 18.)

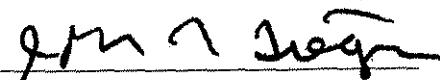
It appears clear that Mrs. Weitz was never advised that the problem had gone away. Nevertheless, Mrs. Weitz became unreasonably optimistic when advised by her counsel that the dispute *might* go away. She, and her arborist, pressed ahead. In order to be subject to trebling of damages, the actions of Mr. and Mrs. Weitz must be willful and intentional, not "merely negligent." *Bumgarner v. Bumgarner*, 124 Idaho 629, 639, 862 P.2d 321, 331 (Ct. App. 1993). The facts establish that Mr. and Mrs. Weitz in pressing ahead were unreasonable. However, the evidence fails to establish that the timber trespass attributable to Mr. and Mrs. Weitz through the actions of Mr. Townsend was willful and intentional. When Mr. and Mrs. Weitz hired Mr. Townsend, they unreasonably thought that the property dispute might have been resolved by the Greens' settlement with the Rogers' Family Trust. They were negligent in moving ahead, but their negligence does not arise to an intentional and willful act. Consequently, the trespass engaged in by Mr. Townsend is not subject to trebling.

The final issue remaining for decision is the claim by the Castles, Greens and Shooks that the title to their property has been slandered by the Weitz family. There are four essential elements to a slander of title action. These include: "(1) The uttering and publication of the slanderous words by the defendant [sic]; (2) the falsity of the words; (3) malice, and (4) special damages" *Matheson v. Harris*, 98 Idaho 758, 759, 572 P.2d 861, 862 (1977). It appears that the Weitz family slandered the Greens' title by making the assertions they did in their

complaint. The real questions presented are whether the actions of the Weitz family were malicious and whether the Greens can show special damages. "Malice has been generally defined by Idaho courts as a reckless disregard for the truth or falsity of a statement." *Weaver v. Stafford*, 134 Idaho 691, 701, 8 P.3d 1234, 1244 (2000). As to this component, it appears that the Weitz family was reckless in its challenge to the Greens' title. As an example, the complaint alleges that the hogwire fence on the eastern portion of the disputed property "extended southerly along the eastern boundary of the Disputed Property to its intersection with the fence and fenceline to keep intruders from trespassing on the NE 1/4 of said Section 8 and the Disputed Property." Complaint at ¶ 21. This statement is false. Further, it was reckless of the Weitz family to make this assertion. Consequently, malice has been established. The final remaining question is whether the Greens can establish special damages. If they can, then all of the elements of a slander of title claim will have been proven. A review of the case law indicates that attorney's fees constitute "special damages" for purposes of creating a *prima facie* case of slander of title. See *Rayl v. Shull Enterprises, Inc.*, 108 Idaho 524, 530, 700 P.2d 567, 573 (1984). Consequently, the Castles, Greens and Shooks have proven the Weitz family slandered their title.

Counsel for the Castles, Greens and Shooks are directed to submit judgments that will quiet title in the disputed property to them and award \$500.00 each to the Castles, Greens and Shooks for the timber trespass they experienced. Judgment in these amounts should be against Mr. and Mrs. Weitz since the evidence was that they hired Mr. Townsend. Having concluded that the Greens are entitled to special damages under their slander of title claim, attorney's fees will be dealt with elsewhere in a separate decision.

DATED this 28th day of June 2006.


John R. Stegner
District Judge

CERTIFICATE OF SERVICE


I do hereby certify that a full, true complete and correct copy of the foregoing
MEMORANDUM DECISION was mailed to:

CHARLES A. BROWN
ATTORNEY AT LAW
P.O. BOX 1225
LEWISTON, ID 83501

ROBERT M. MAGYAR
ATTORNEY AT LAW
PO BOX 8074
MOSCOW, ID 83843

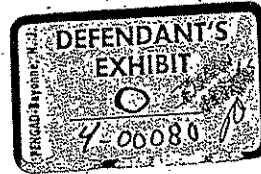
ANDREW SCHWAM
ATTORNEY AT LAW
514 SOUTH POLK STREET
MOSCOW, ID 83843

on this 28 day of June 2006.


Deputy Clerk

NE 1/4

WEITZ



E 1/4 CORNER
SET ALUM. CAPPED
REBAR AT SINGLE
PROPORTION AND FILE
CR #472243 //

N01°00'27"E
2519.88'

C1/4 CORNER

800.00

N89°51'56"W 2636.61'

1011.61

825.00

2617.35'

TRACT 2
31.04 ACRES

TRACT 1
48.00 ACRES

TRACT 4 REMAINDER
36.88 ACRES

S04°45'00"E
1657.06'

S03°41'52"W
1405.10'

N82°20'54"W
150.69'

N61°19'15"E
380.91'

N87°47'01"E
178.37'

S78°53'48"E 154.20'

N57°40'48"E 144.36'

S39°14'25"E 278.97'

N27°35'08"E 376.90'

N43°04'12"E 275.34'

N14°59'20"E 173.74'

APPROXIMATE ALIGNMENT OF
50' ROAD EASEMENT

TRACT 3
42.13 ACRES

FOUND 2" IRON PIPE
AT SUBD. CORNER

1649

2317.35'

S01°09'40"W 2617.35'

300.00'

CASE NO. CV 1004-88

2006 JUN 28 PM 4: 07

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO J. WEITZ,
husband and wife, and WEITZ & SONS, LLC,
an Idaho limited liability company,

Plaintiffs,

vs.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK and
MARY E. SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C. CASTLE,
and U.S. BANK, N.A.,

Defendants/Counter Plaintiffs.

TODD A. GREEN and TONIA L. GREEN,
husband and wife, STEVEN R. SHOOK and
MARY E. SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C. CASTLE,

Counter-Plaintiffs,

vs.

GERALD E. WEITZ and CONSUELO J. WEITZ,
husband and wife, and WEITZ & SONS, LLC,
an Idaho limited liability company,

Counter-Defendants.

Case No. CV-04-00080

ORDER AWARDING DEFENDANTS/
COUNTER-PLAINTIFFS COSTS AND
ATTORNEYS' FEES

DETERMINATION OF PREVAILING PARTY

Currently pending in this case is the motion of Todd and Tonia Green seeking an award

of costs and attorneys' fees. (Due to the unique posture of this case, all of the costs and attorneys' fees have been paid by or are the obligation of Todd and Tonia Green. See Verified Memorandum of Costs and Attorney Fees at 4. Consequently, any reference to the Greens is merely a shorthand way of referring to the Castles, Shooks and Greens.)

In order to recover, the Greens must be determined to be the prevailing party in this case. "The determination as to the prevailing party . . . is a matter committed to the sound discretion of the trial court and the trial court's determination will not be disturbed absent an abuse of that discretion." *J.R. Simplot Co. v. Chemetics Intern.*, 130 Idaho 255, 257, 939 P.2d 574, 576 (1997) (citing *Noble v. Fisher*, 126 Idaho 885, 892, 894 P.2d 125 (1995); and I.R.C.P. 54(d)(1)(B)).

In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed "in the action." That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis.

Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005) (citation omitted).

In this case the Weitz family, the plaintiffs/counter-defendants, sought to prove the following: boundary by agreement; prescriptive easement; that the Greens were not bona fide purchasers of the disputed property; equitable estoppel and quasi estoppel. All of the claims brought by the Weitz family were rejected. The Castles, Greens and Shooks, defendants/counter-plaintiffs, sought the following relief in their counterclaim: quiet title to the disputed property; damages for timber trespass; and damages for slander of title. The Castles, Greens and Shooks obtained partial, or total, relief on each of the claims made by them. Based on the relief requested and ultimately obtained, this Court finds that "in the action" the Castles, Greens and Shooks are the prevailing parties for purposes of awarding of costs. Viewing the result in this case from the overall perspective, it seems apparent that the Castles,

obtaining copies of exhibits for trial, \$53.21; and costs to obtain preliminary injunction hearing transcript, \$522.75. The requirement that a prevailing party demonstrate that costs be both necessary and exceptional is a substantial burden, which cannot be easily overcome.

The Greens' request for the additional travel expenses for witness Tom Rogers in the amount of \$314.73 is granted. It was necessary for Mr. Rogers to travel to testify in this case, and his costs were reasonably incurred. He was a critical witness. Ensuring his attendance appears to be both necessary and exceptional.

The requested discretionary cost for the additional costs associated with aerial photographs is denied. Expenses incurred in obtaining aerial photographs and preparing them for use as exhibits are "routine costs associated with modern litigation overhead." See *Inama v. Brewer*, 132 Idaho 377, 381, 973 P.2d 148, 152 (1999). Even though this Court viewed the aerial photographs at trial, they were merely a piece in the puzzle of evidence and not "exceptional" by any means.

The Greens' requested additional expert witness fees in the amount of \$6,106.25, are likewise not "exceptional." "Six figure cases involving. . . expert witnesses who charge more than \$500.00 no longer are unusual or extraordinary." *Id.* Even though this was a time-consuming boundary dispute case that involved the use of experts, those expert witness fees are not exceptional.

The amount sought for trial exhibits copying is likewise not exceptional. "While [this cost was] necessary and reasonable, [it was] not exceptional, but merely 'part and parcel of the overhead involved in prosecuting or defending a case in a modern law office.'" *Scott v. Buhl* Joint District No. 412, 123 Idaho 779, 782, 852 P.2d 1376, 1379 (1993) (citation omitted).

Finally, this Court concludes that the request for the copy of the preliminary injunction hearing transcript is both necessary and exceptional. It was necessary because it included testimony of many of the principals involved in this case. It was exceptional in that it is unusual to have a preliminary injunction sought during the progression of a civil lawsuit. It

was necessary in this case and, therefore, discretionary costs in the amount of \$522.75 should be awarded to the Greens in obtaining that transcript.

ATTORNEYS' FEES

"Courts in the United States have long adhered to the 'American Rule' of awarding attorney fees. Each side is to pay its own fees except in a limited number of circumstances." *Fournier v. Fournier*, 125 Idaho 789, 791, 874 P.2d 600, 602 (Ct. App. 1994) (citation omitted). As the Idaho Supreme Court noted: "[i]n Idaho, we adhere to the 'American rule' which requires the parties to bear their own attorney fees absent statutory authorization or contractual right." *Great Plains Equipment v. N.W. Pipeline*, 132 Idaho 754, 771, 979 P.2d 627, 644 (1999) (citation omitted).

In this case, the Greens seek attorneys' fees on three bases: Idaho Code section 6-202 for the timber trespass; Idaho Code section 12-121 and Rule 54(e)(1) on the basis that the case was pursued or defended frivolously, unreasonably, or without foundation; and special damages under slander of title. Each of these claims will be addressed in turn.

Under Idaho Code section 6-202, Idaho's timber trespass statute, "[a]ny person who cuts down or carries off any . . . timber on the land of another person . . . is liable to the owner of such land . . . for treble the amount of damages which may be assessed . . . plus a reasonable attorney's fee shall be taxed as costs." "Although not stated in the statute, I.C. § 6-202 applies only where the alleged trespass is shown to have been willful and intentional." *Bumgarner v. Bumgarner*, 124 Idaho 629, 639, 862 P.2d 321, 331 (Ct. App. 1993). In this Court's Amended Memorandum Decision, the actions of Mr. and Mrs. Weitz were found to be negligent, but not willful and intentional. Therefore, attorney fees are not available to the Greens under Idaho's timber trespass statute.

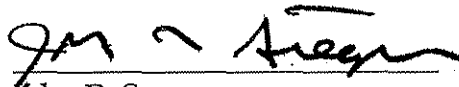
The second basis claimed by the Greens to entitle them to attorneys' fees are Idaho Code section 12-121 and Rule 54(e)(1), I.R.C.P. The basis for this claim is that the Weitz family either pursued their claims or defended the claims brought against them frivolously, unreasonably or

without foundation. Idaho Code section 12-121, when read in conjunction with Rule 54(e)(1), enables a court to award attorney's fees when the action is pursued or defended frivolously, unreasonably or without foundation. The substantive impediment to the Greens' claim on this basis is that "[a]ttorney fees are not appropriate under § 12-121 and I.R.C.P. 54(e) unless *all* claims or *all* defenses asserted are frivolous and without foundation." *Management Catalysts v. Turbo West Corpac*, 119 Idaho 626, 630, 809 P.2d 487, 491 (1991) (italics added). Unfortunately for the Greens, this Court cannot conclude that all of the claims and all of the defenses pursued by the Weitz family were frivolous, unreasonable or without foundation. It appears in retrospect that certain components of the complaint were pled without foundation. However, to reiterate, all of the claims and all of the defenses need be shown to be frivolous, unreasonable or without foundation in order to award attorneys' fees under § 12-121.

Finally, the Greens seek attorneys' fees as special damages under their slander of title cause of action. As noted in this Court's Amended Memorandum Decision, the Greens proved all the elements necessary for this Court to conclude that the Weitz family had slandered the title to the disputed property. As a result, the Greens are entitled to attorneys' fees as special damages under that cause of action. This Court concludes that an appropriate amount of attorneys' fees for proof of slander of title in this case is \$40,000.

Counsel for the Greens are directed to submit an appropriate judgment as set out in this Court's Amended Memorandum Decision which includes costs as a matter of right, discretionary costs and attorneys' fees.

DATED this 28th day of June, 2006.


John R. Stegner
District Judge

CERTIFICATE OF SERVICE


I do hereby certify that a full, true complete
and correct copy of the foregoing **ORDER AWARDING
DEFENDANTS/COUNTER-PLAINTIFFS COSTS
AND ATTORNEYS' FEES** was mailed to:

CHARLES A. BROWN
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ATTORNEY AT LAW
PO BOX 8074
MOSCOW, ID 83843

ANDREW SCHWAM
ATTORNEY AT LAW
514 SOUTH POLK STREET
MOSCOW, ID 83843

on this 28 day of June, 2006.


Deputy Clerk

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Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)
Plaintiffs/Counterdefendants,)
v.)
TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)
Defendants/Counterplaintiffs.)

Case No. CV-04-000080

DEFENDANTS'/COUNTERPLAINTIFFS'
MOTION FOR AN AWARD OF
ADDITIONAL ATTORNEY FEES
AS SPECIAL DAMAGES UNDER THEIR
SLANDER OF TITLE CAUSE OF
ACTION (INCLUDED IN A
SUPPLEMENTAL MEMORANDUM
OF COSTS)

COME NOW DEFENDANTS/COUNTERPLAINTIFFS, hereafter Greens, by and
through their attorneys of record, and Move the Court to award a portion of the attorney fees set
out in their supplemental verified memorandum of costs as special damages under their slander
of title cause of action.

CASE NO. CV 2004-80

2006 JUL 19 PM 4:35

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AM DEPUTY

Greens have submitted their additional legal fees to the Court in two parts.

The first part includes legal fees solely related to the preparation of their Motion for costs to be awarded as special damages under their slander of title cause of action. Greens assert these fees should be awarded as special damages under slander of title.

The second part includes legal fees incurred by Greens from March 31, 2006 (the last date of billing submitted in Greens' original Verified Memorandum of Costs) through July 10, 2006 in the general representation of Greens in this matter. Greens request the Court decide what portion of these fees relate to their Slander of Title cause of action, and award such additional amount to Greens pursuant to the Court's ORDER AWARDING DEFENDANTS/COUNTER-PLAINTIFFS COSTS AND ATTORNEYS' FEES.

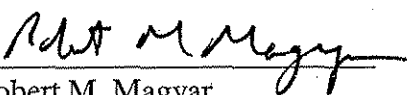
This Motion is supported by Idaho case law, including the following Idaho cases: See Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 and Rayl v. Shull Enterprises Inc., 108 Idaho 524, 700 P.2d 567. These cases establish that attorney fees and costs associated with Greens' slander of title cause of action should be awarded by the Court.

This Motion is also made pursuant to the Court's ORDER AWARDING DEFENDANTS/COUNTER-PLAINTIFFS COSTS AND ATTORNEYS' FEES.

Greens have filed herewith their Supplemental Verified Memorandum of Costs and Attorney Fees in support of this Motion, including the affidavits of their attorneys of record.

Greens have noticed this Motion for a hearing at which they will support this Motion with oral argument. This Motion is made pursuant to I.R.C.P. 11(a)(2)(B).

DATED this 19th day of July, 2006.

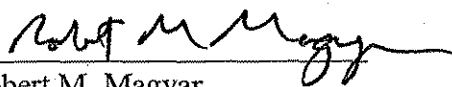

Robert M. Magyar
Attorney for Defendants/Counterplaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2006, I caused a true and correct copy of the foregoing MOTION FOR AN AWARD OF ATTORNEY FEES AS SPECIAL DAMAGES UNDER SLANDER OF TITLE to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery


Robert M. Magyar

CASE NO. CV2004-80

2006 JUL 19 PM 4:35

CLERK OF DISTRICT COURT
LATAH COUNTY

BY DEPUTY

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Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)	
J. WEITZ, husband and wife, and WEITZ	)	Case No. CV-04-000080
& SONS, LLC, an Idaho limited liability)	
company,)	
	)	DEFENDANTS'/COUNTERPLAINTIFFS'
Plaintiffs/Counterdefendants,	)	MOTION FOR AN AWARD OF COSTS
v.	)	AS SPECIAL DAMAGES UNDER THEIR
	)	SLANDER OF TITLE CAUSE OF
	)	ACTION
TODD A. GREEN and TONIA L. GREEN,)	
husband and wife, STEVEN R. SHOOK)	
and MARY E. SILVERNALE SHOOK,)	
DANIAL T. CASTLE and CATHERINE)	
C. CASTLE, and U.S. BANK N.A.,)	
)	
Defendants/Counterplaintiffs.)	

COME NOW DEFENDANTS/COUNTERPLAINTIFFS, hereafter Greens, by and
through their attorneys of record, and Move the Court to award Greens certain costs as special
damages under their slander of title cause of action.

As noted in the Court's Amended Memorandum Decision, the Greens proved all the elements necessary for the Court to conclude that the Plaintiffs had slandered the title to the disputed property. As a result, the Court determined that Greens were entitled to attorneys' fees as special damages under that cause of action, and further determined that an appropriate amount of attorneys' fees for proof of slander of title was \$40,000.00.

Greens assert that certain costs incurred by them should also be awarded to them as special damages under their slander of title cause of action. Such costs were incurred by Greens as a direct result of Plaintiffs' slander of Greens' title and were necessary.

When Greens submitted their Verified Memorandum of Costs and Attorney Fees to the Court, they included costs specifically related to their slander of title cause of action as Discretionary Costs because the Court had not yet determined that Plaintiffs slandered Greens title to the disputed property. While the Court may believe certain costs submitted by Greens as Discretionary Costs could not be properly awarded under I.R.C.P. Rule 54, Greens assert that many of those costs should be considered to be special damages awardable under their slander of title cause of action. Greens therefore request the Court reconsider certain of those costs submitted as Discretionary costs, and award them to Greens as special damages under slander of title. The costs incurred by Greens that are specifically related to their slander of title cause of actions include the following (numbered paragraphs below refer to the paragraphs listed in Greens' original Verified Memorandum of Costs and Attorney Fees).

14. Additional Expert Witness Fees – Ronald P. Monson, exceeding the amount claimed in 8. as Costs As a Matter of Right – \$3,170.00. Mr. Monson's work and trial testimony in this matter related solely to the issue of ownership of the disputed property, and thus go to the heart

of slander of title. Mr. Monson's contribution to Greens' case was necessary to prevail on their theory of slander of title.

15. Costs to obtain aerial photographs – Joseph J. Ulliman – \$2,817.00. Mr. Ulliman's assistance and the aerial photographs he obtained for Greens related solely to the issue of ownership of the disputed property, and thus go to the heart of slander of title. The aerial photographs were key to proving that certain claims asserted by Plaintiffs in their Complaint were false. For example, the photographs showed that logs cut and taken from the disputed property in the 80's were taken to the Rogers' (Greens') property, and when Schoepflin logged property to the north of the disputed property in the 50's he stopped logging at or very near the true property line, and refrained from logging in the disputed/Rogers' (Greens') property. In other words, aerial photographs proved the Plaintiffs' claims asserted in paragraphs 10, 18, 19, 30, 31, 32, 33, 35, 36, 37, and 38 of their Complaint were false. The extent aerial photographs were used in other parts of Greens case was tiny, if at all.

12. Additional Costs of preparation of maps, pictures and photographs exceeding the amount claimed in 6. as Costs As a Matter of Right – \$1,261.64. These additional costs were related to the issue of ownership of the disputed property, and thus go to the heart of slander of title. They included photos and maps of the fence remnants, hog wire fence, trail and surveyor's markers/actions, the latter noted by the Court is when "the Weitz family sprang into action". These additional maps, pictures and photographs proved the Plaintiffs' claims asserted in paragraphs 10, 11, 12, 15, 16, 18, 19, 21, 23, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, and 41 of their Complaint were false. The extent these maps, pictures and photographs were used in other parts of Greens case was tiny.

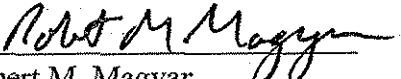
This Motion is supported by Idaho case law, including the following Idaho cases: See Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 and Rayl v. Shull Enterprises Inc., 108 Idaho 524, 700 P.2d 567. These cases establish that attorney fees and costs associated with Greens' slander of title cause of action should be awarded by the Court. In Rayl, supra at 530, the Court stated,

However, the trial court erred when it ruled that the attorney fees and costs expended by Shull in its attempt to remove the false lien from its property did not constitute those special damages required in a slander of title action. As noted in Prosser, Torts, § 128, at p. 922: "Likewise it would appear obviously to include the expenses of legal proceedings necessary to remove a cloud on the plaintiff's title, or other expenses to counteract the disparagement" As noted by a New Mexico court, "In a slander of title action the plaintiff must prove actual pecuniary damage, and proof of attorneys' fees and other costs of a quiet title suit to remove the slander are such pecuniary damages." Den-Gar Enterprises v. Romero, 94 N.M. 425, 611 P.2d 1119, 1124 (App.1980). Although some courts have ruled that a slander of title action must be dismissed if it fails to allege the loss of a particular pending sale, as urged by Rayl, see Shell Oil Co. v. Howth, 138 Tex. 357, 159 S.W.2d 483 (1942), other courts have allowed maintenance of a slander of title action where the only special damage shown was the expense of removing the cloud upon a plaintiff's title. See Summa Corp. v. Greenspun, 655 P.2d 513 (Nev.1982). Thus, in Summa Corp. v. Greenspun, supra, after considering those cases where attorney fees incurred were allowed as a special damage, the court said: "We believe the rationale of [these cases] is based on reason and recognizes that but for the wrongful act of slander of plaintiff's title, the plaintiff would not incur any expenses in removing the cloud from his title." Id. at 515. We agree with the reasoning of the court in Summa Corp. v. Greenspun, supra. It seems clear that, but for the slander of title caused by the filing of a false lien, Shull would not have incurred the excessive amount of attorney fees directly attributable to removal of the lien and the cloud from the title of the property. Thus, the trial court erred in ruling that no special damages have been proven. Upon remand, *the trial court should award those attorney fees and costs as damages for the slander of title, and should also consider whether, in its discretion, punitive damages should be awarded based upon the establishment of a cause of action for slander of title.* (Emphasis Added)

Defendants/Counterplaintiffs have filed herewith their Supplemental Verified Memorandum of Costs and Attorney Fees in support of this Motion, including the affidavits of their attorneys of record.

Greens have noticed this Motion for a hearing at which they will support this Motion with oral argument. This Motion is made pursuant to I.R.C.P. 11(a)(2)(B).

DATED this 19th day of July, 2006.

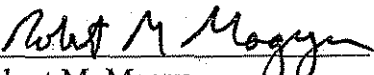

Robert M. Magyar
Attorney for Defendants/Counterplaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2006, I caused a true and correct copy of the foregoing MOTION FOR AN AWARD OF COSTS AS SPECIAL DAMAGES UNDER SLANDER OF TITLE to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery


Robert M. Magyar

CASE NO. CV 2004-80

2006 JUL 19 PM 4:35

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AT DEPUTY

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)	
J. WEITZ, husband and wife, and WEITZ	)	Case No. CV-04-000080
& SONS, LLC, an Idaho limited liability)	
company,)	
	)	SUPPLEMENTAL
Plaintiffs/Counterdefendants,)	
v.	)	VERIFIED MEMORANDUM OF COSTS
)	
TODD A. GREEN and TONIA L. GREEN,	)	AND ATTORNEY FEES
husband and wife, STEVEN R. SHOOK)	
and MARY E. SILVERNALE SHOOK,)	
DANIAL T. CASTLE and CATHERINE)	
C. CASTLE, and U.S. BANK N.A.,)	
)	
Defendants/Counterplaintiffs.)	
)	

COME NOW DEFENDANTS/COUNTERPLAINTIFFS, hereafter Greens, by and
through their attorneys of record, and submit the following supplemental verified memorandum
of costs and attorney fees to be considered by the Court as special damages under slander of title.
The Affidavits of attorneys Robert M. Magyar and Andrew Schwam re: Attorney Fees are filed
herewith.

For reference purposes, the numbered paragraphs below refer to the paragraphs listed in Greens' original Verified Memorandum of Costs and Attorney Fees. When Greens submitted their original Verified Memorandum of Costs and Attorney Fees to the Court, they included costs specifically related to their slander of title cause of action as Discretionary Costs because the Court had not yet determined that Plaintiffs slandered Greens title to the disputed property. While the Court may believe certain costs submitted by Greens as Discretionary Costs could not be properly awarded under I.R.C.P. Rule 54, Greens assert that many of those costs should be considered to be special damages awardable under their slander of title cause of action.

COSTS AS SPECIAL DAMAGES UNDER SLANDER OF TITLE

12. Additional Costs of preparation of maps, pictures and photographs \$ 401.30
exceeding the amount listed above – Costs to obtain aerial photos.

Balance of costs – Potlatch Corp. (see #6) \$177.30
National Air Survey Center Corp. 64.00
USDA – FSA Aerial Photo Field Office 160.00

Additional Costs of preparation of maps, pictures and photographs \$ 614.43
exceeding the amounts listed above – Costs to obtain copies of digital
photos for use as Exhibits at trial and filings with the Court – Kits Camera.

Additional Costs of preparation of maps, pictures and photographs \$ 32.00
exceeding the amounts listed above – Costs to obtain copies of digital
photos for use as Exhibits at trial and filings with the Court – Magyar Costs
Advanced.

Additional Costs of preparation of maps, pictures and photographs \$ 152.11
exceeding the amounts listed above – Costs to obtain copies of digital
photos for use as Exhibits at trial and filings with the Court – Costs to
obtain copies from Clerk – Costs for binders and large copies – Schwam Costs
Advanced.

Additional Costs of preparation of maps, pictures and photographs \$ 61.80
exceeding the amounts listed above – Costs to obtain color and black
and white copies of photos for use as Exhibits at trial, and Avery tabs
for use in preparation of Trial Binders – Staples.

14. Additional Expert Witness Fees – Ronald P. Monson. \$ 3,170.00

15. Costs to obtain aerial photographs – Joseph J. Ulliman. \$ 2,817.00

Mr. Ulliman has worked with Potlatch Corp., the government, and others over the years in obtaining aerial photography, and is the most efficient source Defendants could use in obtaining aerial photography for trial. Mr. Ulliman was able to find and obtain aerial photos that otherwise would not have been available to Defendants/Counterplaintiffs. Mr. Ulliman knew what entities had photos and how to contact those entities to obtain aerial photos used as admitted exhibits by counsel and witnesses at trial. As a result of his experience, Mr. Ulliman was able to efficiently determine which photos were relevant to the land in question, and obtain them.

ADDITIONAL ATTORNEY FEES AS COSTS

Greens' Motion for Award of Costs as Special Damages under Slander of Title

The following attorney fees were incurred by Greens solely to prepare their Motion for an Award of Costs as Special Damages under their Slander of Title Cause of Action. These fees were not included in the next paragraph. Greens ask the Court to award these attorney fees as special damages under slander of title.

Robert M. Magyar attorney fees \$ 250.00

Andrew Schwam attorney fees \$ 90.00

TOTAL \$340.00

Additional attorney fees incurred by Greens since March 31, 2006.

The following attorney fees were incurred by Greens from March 31, 2006 (the last date of billing submitted in Greens' original Verified Memorandum of Costs) through July 10, 2006 in the general representation of Greens in this matter. Greens request the Court decide what portion of these fees relate to their Slander of Title cause of action, and award such additional

amount to Greens pursuant to the Court's ORDER AWARDING DEFENDANTS/COUNTER-
PLAINTIFFS COSTS AND ATTORNEYS' FEES.

Robert M. Magyar attorney fees \$ 4,050.00

Andrew Schwam attorney fees \$ 4,230.00

TOTAL **\$8,280.00**

* See Affidavits of Robert M. Magyar and Andrew Schwam Re: Attorney Fees filed
herewith for itemization of attorney fees incurred by each attorney.

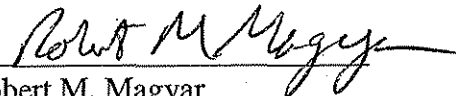
All attorney fees and costs incurred by the Defendants/Counterplaintiffs have been or will
be paid by Mr. and Mrs. Todd Green only, not by Shooks, Castles or any other entity or person.

STATE OF IDAHO)
)
 :SS.
County of Latah)

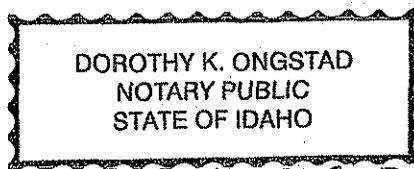
Robert M. Magyar, being first duly sworn upon oath, deposes and says as follows:

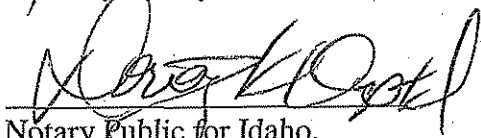
1. I am one of the attorneys for Defendants/Counterplaintiffs herein.

2. The factual assertions set forth in the above memorandum of costs are made based upon my firsthand knowledge; they are true and correct. To the best of my knowledge and belief, the cost items submitted herein are correct, and the costs claimed are special damages under Greens' slander of title cause of action.


Robert M. Magyar

SUBSCRIBED AND SWORN TO before me this 19th day of July, 2006.



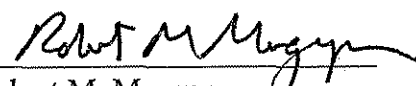

Notary Public for Idaho,
Residing at Moscow, Idaho.
Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2006, I caused a true and correct copy of the foregoing SUPPLEMENTAL VERIFIED MEMORANDUM OF COSTS AND ATTORNEY FEES to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

() Overnight Mail
() U.S. Mail
☒ Facsimile
() Hand Delivery


Robert M. Magyar

MAGYAR LAW FIRM

Robert M. Magyar, Attorney at Law
Main Street Professional Building - Suite 200
201 North Main Street - Post Office Box 8074 - Moscow, Idaho 83843
Tel 208-882-1906 - Fax 208-892-8030

Invoice submitted to:
Todd Green
Greenview Lane
Moscow ID 83843

July 18, 2006

In Reference To: Property Boundary Dispute

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/3/2006 Revise Document Review and revise Memo of costs, Affidavits, Motion, Memorandum in support of Motion, re-calculate costs, obtain copies for filings, (time spent: April 1, 2, and 3rd)	2.50 125.00/hr	312.50
4/4/2006 Telephone Conference - Co-Counsel status with Brown, review of case points for argument	0.60 125.00/hr	NO CHARGE
Telephone Conference - Opposing Party/Attorney tel conf and email re missing page from proposed findings	0.20 125.00/hr	25.00
Prepare Document organize and copy receipts for memo of costs - Kinkos, Prepare Supplement to Memo of costs, deliver to Andy	1.30 125.00/hr	162.50
4/3/2006 Miscellaneous travel to/from Lewiston	0.80 125.00/hr	NO CHARGE
Outside Conference - Opposing Party/Attorney Chuck Brown in Lewiston re our filings	0.30 125.00/hr	37.50
Miscellaneous travel to/from Lewiston	0.80 125.00/hr	100.00
4/5/2006 Miscellaneous travel to/from Lewiston, copies of documents and file, deliver to Brown	1.00 125.00/hr	125.00
Miscellaneous travel to/from Lewiston	0.80 125.00/hr	NO CHARGE

Todd Green

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
4/11/2006 General Correspondence to clients re hearing date and time	0.10 125.00/hr	12.50
4/17/2006 Telephone Conference - Client re Brown response to our motions, tel confs clients re meeting and affidavits	0.50 125.00/hr	62.50
Miscellaneous deliver docs to Andy, tel conf Andy re Brown response	0.40 125.00/hr	NO CHARGE
Telephone Conference - Co-Counsel tel confs Andy re Brown response, review Brown documents, compute legal fees as of settlement offers, begin work on affidavits	1.50 125.00/hr	187.50
4/18/2006 Prepare Document review newly filed Brown documents - memo in opposition to motion to clarify..., work on affidavits	1.00 125.00/hr	125.00
Prepare Document review Brown documents with Andy and clients, work on affidavits, prepare for hearing on the 25th, review files, pleadings and testimony	6.00 125.00/hr	750.00
4/19/2006 Telephone Conference - Co-Counsel re Consuelo Weitz testimony and affidavits	0.60 125.00/hr	NO CHARGE
Office Conference - Client meeting with clients to discuss hearing and affidavits, revise affidavits, file and mail copies to Brown	0.70 125.00/hr	87.50
4/23/2006 Telephone Conference - Co-Counsel re hearing and documents for hearing	0.20 125.00/hr	NO CHARGE
4/24/2006 Review Documents review file and documents and pleadings, prepare documents for hearing, discuss argument with Andy, review fax from Brown, review rules of evidence and procedure, review transcripts	6.00 125.00/hr	750.00
Review Documents prepare for hearing, prepare and organize file and documents and pleadings for hearing, discuss argument with Andy	0.70 125.00/hr	87.50
4/25/2006 Court Appearance prepare for hearing, hearing, meeting with Andy and clients, meeting with Andy	4.30 125.00/hr	537.50
Court Appearance meetings with Andy	1.50 125.00/hr	NO CHARGE
4/26/2006 Miscellaneous prepare info for Andy	0.30 125.00/hr	37.50
Prepare Document supplemental affidavit, tel confs with Andy	0.50 125.00/hr	62.50

	<u>Hrs/Rate</u>	<u>Amount</u>
4/26/2006 Letter to Opposing Party/Attorney re response to affidavits	0.20 125.00/hr	25.00
4/27/2006 Miscellaneous organize pleadings and files for hearing	0.80 125.00/hr	100.00
5/9/2006 Telephone Conference - Co-Counsel re hearing	0.20 125.00/hr	NO CHARGE
Telephone Conference - Co-Counsel re hearing	0.20 125.00/hr	25.00
6/30/2006 Telephone Conference - Client tel conf Todd and Steve re decisions, email to clients. Email Andy	1.00 125.00/hr	125.00
7/4/2006 Telephone Conference - Co-Counsel Andy re how to proceed	0.10 125.00/hr	NO CHARGE
7/5/2006 Letter to Co-Counsel email Andy re next	0.10 125.00/hr	NO CHARGE
Letter to Co-Counsel email Andy and clients re meeting	0.10 125.00/hr	NO CHARGE
Letter to Client email Todd re outstanding bills	0.10 125.00/hr	12.50
7/6/2006 Letter to Client clients re meeting	0.10 125.00/hr	12.50
7/10/2006 Letter to Client contact clients re meeting	0.10 125.00/hr	12.50
Telephone Conference - Co-Counsel Andy re meeting and Motions to file	0.10 125.00/hr	12.50
Office Conference - Client meeting re status of case and Motions to file	1.80 125.00/hr	225.00
6/29/2006 Review Documents Amended Memorandum Decision and Order Awarding fees and costs, prepare document showing costs submitted/costs allowed to determine costs to submit as special damages under slander of title, scan documents to email to Andy and clients, email Andy, tel Andy	0.30 125.00/hr	37.50
4/17/2006 Telephone Conference - Co-Counsel tel confs Andy re Brown response, review Brown documents, compute legal fees as of settlement offers, begin work on affidavits	1.00 125.00/hr	NO CHARGE
For professional services rendered	38.80	\$4,050.00

SCHWAM LAW FIRM

514 SOUTH POLK STREET #6

MOSCOW, IDAHO 83843

ANDREW SCHWAM
Admitted in Idaho, Wash. and New York

July 10, 2006

Office Hours By
Appointment Only

(208) 882-4190

Fed. ID # 82-0422316

Todd and Tonia Green
1418 Four Mile Rd.
VIOLA, ID 83872

Here is my bill for the period from April 1, 2006 to July 10, 2006. These charges are in addition to those shown in my last comprehensive billing of March 31, 2006.

Total Charges this bill	\$ 4230.00
Total Previous Charges	\$ 50112.11
Payment 5-5-05	\$ 1500.00
Payment 5-17-05	\$ 5245.00
TOTAL NOW DUE	\$ 47597.11

CHARGES FOR SERVICES

A detailed itemization supporting the following charges appears in the page attached to this billing.

4-1-06 to 7-10-06	28.2 hours @ \$150.00/hour	<u>\$4,230.00</u>
TOTAL CHARGES FOR SERVICES since last bill		\$4,230.00

DATE	SERVICES RENDERED	TIME (hours)
4-17-06	Rev filings from atty Brown, Calls to and from Magyar, Begin preparation of response to Brown's filings	1.9
4-18	Rev transcripts and filings, Meet with clients, Prepare response to atty Brown's filings incl affidavits	6.0
4-24	Meet with Magyar, Prepare for argument, assemble items to present to the Judge	5.3
4-25	Appear in court, meet with clients afterwards	4.3
5-2	Rev affidavits from atty Brown, See Green, prepare for Wed am meeting with clients	.9
5-3	Meet with clients to prepare response to affidavits from Weitz	2.5
5-4	Prepare affidavits and e-mail to clients for review and correction	.5
5-5	Meet with Green and Shook and call from Castle, finalize affidavits, Ltr to Brown, fax to Brown	2.3
5-8	Appear in court and speak to clients after	2.0
5-9	Call Judge to inform him of October 05 interaction with person who later became his clerk.	.1
5-10	Conference call with Judge and Atty Brown re: clerk	.1
7-8	Rev Court Decision	.5
7-10	Meet with Bob and clients, Agree on motions to file.	1.8
TOTAL TIME from 4-1-06 to 7-10-06		28.2

CASE NO CV-2004-80

2006 JUL 19 PM 4:35

CLERK OF DISTRICT COURT
LATAH COUNTY

BY *A* DEPUTY

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)

v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

AFFIDAVIT OF ROBERT M. MAGYAR

RE: ADDITIONAL ATTORNEY FEES

STATE OF IDAHO)
ss:)
County of Latah)

ROBERT M. MAGYAR, being first duly sworn upon oath, deposes and says:

1. I am an attorney admitted to practice law in the State of Idaho.
2. I represented Defendants/Counterplaintiffs herein.

3. I have practiced law in Idaho for more than 30 years.

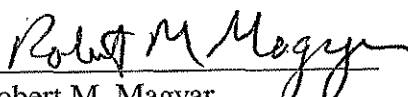
4. A copy of the July 18, 2006 comprehensive billing history submitted to my clients in this case has been attached to and incorporated in the Supplemental Memorandum of Costs filed in this case.

5. All services listed in the July 18, 2006 billing history are in addition to those shown in the billing previously provided to the Court. These services were rendered after the previous billing submitted to the Court. These services were performed and were necessary to properly represent my clients.

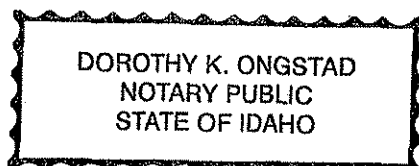
6. All work was billed by the hour at a rate of \$125.00 per hour, with a minimum billing interval of 1/10th of an hour. This hourly rate was charged pursuant to an Employment Agreement entered into with my clients. This hourly rate is reasonable considering the nature of the case tried and the fact that my hourly rate is somewhat lower than the rates charged by many attorneys in this geographic area with experience similar to mine.

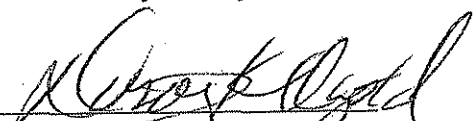
7. It should be noted that in addition to the entries shown in the comprehensive billing history at no charge, many of the entries were billed at less time than they took, and some interactions with clients and co-counsel were not billed at all. Thus, the total hours billed represent a minimum figure less than the total time actually expended on behalf of my clients in this case.

DATED this 19th day of July, 2006.


Robert M. Magyar

SUBSCRIBED AND SWORN TO before me this 19th day of July, 2006.





Notary Public in and for the State of Idaho,
residing in Moscow, Idaho.
My Commission Expires: 4-5-2010

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery


Robert M. Magyar

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Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)

v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

AFFIDAVIT OF ANDREW SCHWAM

RE: ADDITIONAL ATTORNEY FEES

STATE OF IDAHO)
ss:)
County of Latah)

ANDREW SCHWAM, being first duly sworn upon oath, deposes and says:

1. I am an attorney licensed to practice law in the State of Idaho.

AFFIDAVIT OF ANDREW SCHWAM RE: ATTORNEY FEES - 1

CASE NO. CV-2004-8

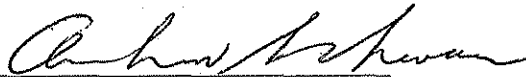
2006 JUL 19 PM 4:35

CLERK OF DISTRICT COURT
LATAH COUNTY

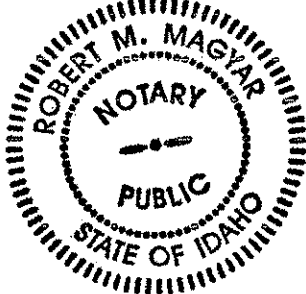
BY DEPUTY

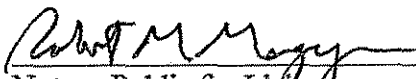
2. I have practiced law for more than 30 years.
3. A copy of the July 10, 2006 bill submitted to my clients in this case has been attached to and incorporated in the Supplemental Memorandum of Costs filed in this case.
4. All services listed in the July 10, 2006 bill are in addition to those shown in the billing previously provided to the Court. These services were rendered after the previous billing submitted to the Court. These services were performed and were necessary to properly represent my clients.
5. All work was billed by the hour at a rate of \$150.00 per hour with a minimum billing interval of 1/10th of an hour. This hourly rate is reasonable considering the nature of the case tried and the fact that my hourly rate is somewhat lower than the rates charged by many attorneys in this geographic area with experience similar to mine.
6. It should be noted that many of the entries were billed at less time than they took and some interactions with clients, and co-counsel were not billed at all. Thus the total hours billed represent a minimum figure less than the total time actually expended.

DATED this 12 day of JULY, 2006.


Andrew Schwam

SUBSCRIBED AND SWORN TO before me this 12 day of JULY, 2006.




Notary Public for Idaho
Residing at moscow, Idaho.
My Commission Expires: 05-05-09

CERTIFICATE OF SERVICE

I hereby certify that on this 19th of July, 2006, I caused a true and correct copy of the foregoing AFFIDAVIT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
☐ U.S. Mail
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☐ Hand Delivery

Robert M. Magyar
Robert M. Magyar

MAGYAR LAW FIRM
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SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
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company,)

Plaintiffs/Counterdefendants,)
v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)
_____)

Case No. CV-04-000080

DEFENDANTS'/COUNTERPLAINTIFFS'
MOTION TO RELEASE THEIR BOND
AND TO MAKE THE PRELIMINARY
INJUNCTION ISSUED BY THE COURT
AGAINST PLAINTIFFS PERMANENT

COME NOW DEFENDANTS/COUNTERPLAINTIFFS, hereafter Greens, by and through
their attorneys of record, and Move the Court to release the bond posted by Greens on April 18,
2005.

Greens posted a \$5,000.00 bond pursuant to the Preliminary Injunction issued by the Court

CASE NO. _____

2006 JUL 19 PM 4:35

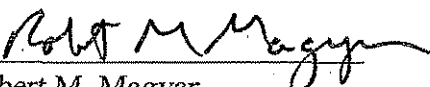
CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ DEPUTY

on April 18, 2005. Since this matter has now concluded and Greens have prevailed, Greens ask the Court to release their bond, and to make the Preliminary Injunction permanent.

Greens have noticed this Motion for a hearing at which they will support this Motion with oral argument. This Motion is made pursuant to I.R.C.P. 65.

DATED this 19th day of July, 2006.



Robert M. Magyar
Attorney for Defendants/Counterplaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2006, I caused a true and correct copy of the foregoing MOTION TO RELEASE BOND AND TO MAKE PRELIMINARY INJUNCTION PERMANENT to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

() Overnight Mail
() U.S. Mail
☒ Facsimile
() Hand Delivery


Robert M. Magyar

CASE NO. CV 2004-80

2006 JUL 28 AM 7:28

CLERK OF DISTRICT COURT
LATAH COUNTY
BY JA DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

Case No. CV 2004-000080

OBJECTION TO DEFENDANTS/
COUNTERPLAINTIFFS' MOTION
TO RELEASE THEIR BOND
AND
TO MAKE THE PRELIMINARY
INJUNCTION ISSUED BY THE COURT
AGAINST PLAINTIFFS PERMANENT

OBJECTION TO DEFENDANTS/
COUNTERPLAINTIFFS' MOTION TO
RELEASE THEIR BOND AND
MAKE THE PRELIMINARY INJUNCTION
ISSUED BY THE COURT AGAINST
PLAINTIFFS PERMANENT

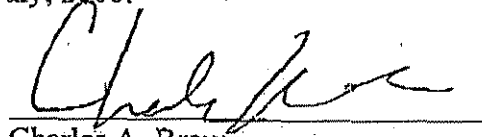
COME NOW the plaintiffs/counterdefendants above named by and through attorney of record, Charles A. Brown, and hereby file their objection to the Defendants/Counterplaintiffs' Motion to Release Their Bond and to Make the Preliminary Injunction Issued by the Court Against Plaintiffs Permanent on the following grounds:

The Preliminary Injunction ordered by this Court on April 18, 2005, indicated that it "shall continue during the pendency of the above-entitled action." That the defendants/counterplaintiffs did not plead in their Counterclaim or Amended Counterclaim that a permanent injunction be awarded by this Court, and thus said issue was not a contested issue at the trial. That I.R.C.P. 65 upon which the movants rely does not contemplate a permanent injunction. That once a final judgment is entered in the above entitled matter, said judgment shall then define the legal rights of the parties in regard to the property in question. Of course, such a judgment did not exist at the time that the preliminary injunction was entered. The preliminary injunction which was entered was issued based upon a hearing at which the defendants/counterplaintiffs presented exhibits and arguments which were not consistent with the facts as ultimately presented at trial.

The plaintiffs/counterdefendants feel that the bond posted should be in effect as long as an injunction is in effect.

Oral argument is requested.

DATED on this 27th day of July, 2006.



Charles A. Brown

Attorney for Plaintiffs/Counterdefendants.

OBJECTION TO DEFENDANTS/
COUNTERPLAINTIFFS' MOTION TO
RELEASE THEIR BOND AND
MAKE THE PRELIMINARY INJUNCTION
ISSUED BY THE COURT AGAINST
PLAINTIFFS PERMANENT

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

✓ _____ sent by facsimile and mailed by
regular first class mail,
deposited in the United States
Post Office

_____ hand delivered

_____ sent by facsimile only
to: 208-892-8030 - Magyar
208-882-4190 - Schwam

_____ sent by Federal Express,
overnight delivery

to: Robert M. Magyar
Attorney at Law
201 N. Main Street, Suite 200
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 27th day of July, 2006.



OBJECTION TO DEFENDANTS/
COUNTERPLAINTIFFS' MOTION TO
RELEASE THEIR BOND AND
MAKE THE PRELIMINARY INJUNCTION
ISSUED BY THE COURT AGAINST
PLAINTIFFS PERMANENT

CASE NO. CV 2004-80

2006 JUL 28 PM 2:53

CLERK OF DISTRICT COURT
LATAH COUNTY

BY MA DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs.

PLAINTIFFS/COUNTERDEFENDANTS'
MOTION TO DISALLOW DEFENDANTS/
COUNTERPLAINTIFFS' REQUEST FOR
COSTS AND ATTORNEY FEES AS
SPECIAL DAMAGES UNDER THEIR
SLANDER OF TITLE CAUSE OF ACTION

COME NOW, the plaintiffs/counterdefendants by and through their attorney of
record, Charles A. Brown, and move this Court, pursuant to I.R.C.P. 54(d)(6) and 54(e)(6) to

PLAINTIFFS/COUNTERDEFENDANTS' MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS AND
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 1

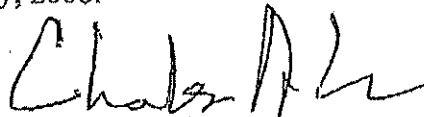
Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1686

disallow all costs and attorney fees sought by the defendants/counterplaintiffs as special damages under their slander of title cause of action. Specifically, plaintiffs/counterdefendants object to the additional expert witness fees of \$3,170.00 for Mr. Monson, aerial photographs of \$2,817.00 for Mr. Ulliman, and \$1,261.62 for discretionary costs, for total costs of \$7,248.62 and additional attorney fees of \$340.00 for the slander of title and \$8,280.00 as additional fees in the matter for the reasons as set forth in the Plaintiffs' Memorandum in Support of Motion to Disallow Defendants' Request for Costs and Attorney Fees as Special Damages under Their Slander of Title Cause of Action filed herewith.

Oral argument is requested.

DATED on this 28th day of July, 2006.



Charles A. Brown
Attorney for Plaintiffs/Counterdefendants

PLAINTIFFS/COUNTERDEFENDANTS' MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS AND
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 2

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-0947/208-746-5886 (fax)

1687

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

_____ mailed by regular first class mail,
and deposited in the United States
Post Office

_____ sent by facsimile only
to: 208-892-8030 - Magyar
208-882-4190 - Schwam

✓ _____ sent by facsimile and mailed by
regular first class mail,
deposited in the United States
Post Office

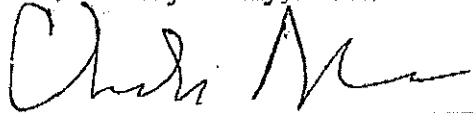
_____ sent by Federal Express,
overnight delivery

_____ hand delivered

to: Robert M. Magyar
Attorney at Law
201 North Main Street, Suite 200
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 28th day of July, 2006.



PLAINTIFFS/COUNTERDEFENDANTS' MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS AND
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 3

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1688

CASE NO CV 2004-80

2006 JUL 28 PM 2:53

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SA DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife
and WEITZ & SONS, LLC, an
Idaho limited liability
company,

Plaintiffs/
Counterdefendants,

vs.

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHERINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/
Counterplaintiffs,

PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF
MOTION TO DISALLOW DEFENDANTS/
COUNTERPLAINTIFFS' REQUEST FOR
COSTS AND ATTORNEY FEES AS
SPECIAL DAMAGES UNDER THEIR
SLANDER OF TITLE CAUSE OF ACTION

PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS &
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 1

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1689

COME NOW, the plaintiffs/counterdefendants by and through their attorney of record, Charles A. Brown, and file this memorandum in support of their Motion to Disallow Defendants/Counterplaintiffs' Requests for Costs and Attorney Fees as Special Damages Under Their Slander of Title Cause of Action in this matter as follows.

FACTS

The defendants/counterplaintiffs have filed a supplemental memorandum of costs and attorney fees in support of their motion for an award of costs and an award of attorney fees as special damages stating that they are entitled to these additional attorney fees and costs as an award of special damages based upon the Order Awarding Defendants/Counter-Plaintiffs Costs and Attorneys' Fees.

ARGUMENT

I. DEFENDANTS ARE NOT ENTITLED TO ADDITIONAL ATTORNEY FEES OR COSTS BASED UPON THE PREVAILING PARTY THEORY FOR THEIR CLAIM OF SLANDER OF TITLE

The Court stated in its Order Awarding Defendants/Counter-Plaintiffs Costs and Attorney Fees on page 5 that "the Greens seek attorneys' fees on three bases: Idaho Code section 6-202 for the timber trespass; Idaho Code section 12-121 and Rule 54(e)(1) on the basis that the case was pursued or defended frivolously, unreasonably, or without foundation; and special damages under slander of title." The Court went on to discuss each request and found as follows:

"Under Idaho Code section 6-202, . . . Mr. and Mrs. Weitz were found to be negligent, but not willful and intentional. Therefore attorney fees are not available. . . ."

. . . "Idaho Code section 12-121 and Rule 54(e)(1), I.R.C.P. . . . this Court cannot conclude that all of the claims and all of the defenses pursued by the Weitz family were frivolous, unreasonable or without foundation. . . . However, to reiterate, all of the claims and all of the defenses need be shown to be frivolous, unreasonable or without foundation in order to award attorneys' fees under § 12-121.

PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS &
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 2

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1690

Finally, the Greens seek attorneys' fees as special damages under their slander of title cause of action. . . . This Court concludes that an appropriate amount of attorneys' fees for proof of slander of title in this case is \$40,000."

See pp. 5-6.

The Court has reviewed the costs submitted by the defendants/counterplaintiffs in this matter, and now the defendants/counterplaintiffs are asking the Court to again review those same costs. Nothing in the matter has changed—no new evidence has been presented which would entitle the defendants/counterplaintiffs to said costs.

II. DEFENDANTS/COUNTERPLAINTIFFS MAY BE THE PREVAILING PARTY IN THIS MATTER AND BUT THEY ARE NOT ENTITLED TO COSTS AS SPECIAL DAMAGES OR ADDITIONAL ATTORNEY FEES AS SPECIAL DAMAGES

The defendants/counterplaintiffs have requested costs as special damages in the amount of \$7,248.62 and also the amount of \$340.00 in attorney fees as special damages. They are requesting the Court review additional attorney fees in the amount of \$8,280.00 to determine what would be additionally due as attorney fees as special damages under the slander of title.

Costs: The costs being requested as special damages have been disallowed by this Court based upon I.R.C.P. 54 and the defendants/counterplaintiffs have not supplied any further basis for why these costs should be allowed by the Court after being disallowed by it. These costs fall into the category of discretionary costs. Pursuant to the rule, the Court has made specific rulings as to why they were not being allowed and thus the defendants/counterplaintiffs have not shown any supportive rule that entitles these to now be turned into acceptable costs. The defendants/counterplaintiffs even state that "the Court had not yet determined that Plaintiffs slandered Greens title to the disputed property." See p. 2 of Defendants/Counterplaintiffs' Motion for an Award of Costs as Special Damages Under Their Slander of Title Cause of Action. If the costs were not allowed previously, they should continue to not be allowed even if they do relate to the slander of title claim.

PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS &
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 3

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1691

Attorney fees: Defendants/Counterplaintiffs have requested the amount of \$340.00 for attorney fees as special damages for the slander of title claim but only because of the process of requesting these additional fees and not for the actual defending of or pursuit of their claim for the slander of title. Thus, the request should be denied.

The defendants/counterplaintiffs have requested additional attorney fees in the amount of \$8,280.00 incurred in "the general representation of Greens in this matter." See p. 3 of Supplemental Verified Memorandum of Costs and Attorney Fees. They are asking this Court to determine what portion of the attorneys' fees relate to the slander of title cause of action and award accordingly. Again, these attorneys' fees were not incurred in the actual defending or pursuit of their claim of slander of title, and thus this request should also be denied.

There has been no showing that the attorneys' fees or costs incurred were reasonable and necessary in regard to said claim. That plaintiffs/counterdefendants filed a quiet title matter in this action which was approximately 13 pages in length not including exhibits. That the substantive portion of the complaint alleged that the plaintiffs/counterdefendants had been in possession of the property in question since 1929 onward which included the operation of a dairy farm until approximately 1975 during which time the disputed property in question was clearly and definitely fenced. Thereafter the plaintiffs/counterdefendants' use and usage of the disputed property continued upon which a trial on the merits was held in this matter. That any and all attorneys' fees sought as damages by the defendants/counterplaintiffs in this matter would have to be directly attributable by them to paragraph 21. of the plaintiffs/counterdefendants' complaint as opposed to the plaintiffs/counterdefendants' filing of the claim as a whole, and the pursuing of a quiet title action from 1929 onward. The defendants/counterplaintiffs attempt to establish attorneys' fees with post trial motions in regard to paragraph 21. of the complaint is unsustainable, inappropriate, and objectionable on the basis as not being properly shown to be reasonable and necessary.

PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS &
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 4

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1692

CONCLUSION

Based upon the foregoing, the plaintiffs/counterdefendants request that the defendants/counterplaintiffs' motion for an award for costs as special damages and an award for additional attorney fees, whether as special damages or general, be denied.

RESPECTFULLY SUBMITTED on this 28th day of July, 2006.



Charles A. Brown
Attorney for Plaintiffs/Counterdefendants

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

☐ mailed by regular first class mail,
and deposited in the United States
Post Office

☐ sent by facsimile only
to: 208-892-8030 - Magyar
208-882-4190 - Schwam

☒ sent by facsimile and mailed by
regular first class mail,
deposited in the United States
Post Office

☐ sent by Federal Express,
overnight delivery

☐ hand delivered

to: Robert M. Magyar
Attorney at Law
201 N. Main Street, Suite 200
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 28th day of July, 2006.



PLAINTIFFS/COUNTERDEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION
TO DISALLOW DEFENDANTS/COUNTER-
PLAINTIFFS' REQUEST FOR COSTS &
ATTORNEY FEES AS SPECIAL DAMAGES
UNDER THEIR SLANDER OF TITLE CAUSE OF ACTION - 5

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1693

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Date: August 2, 2006

Jodi M. Stordiau
Court Reporter
Recording: J: 3/2006-08-02
Time: 3:00 P.M.

GERALD E. WEITZ and CONSUELO J.
WEITZ, husband and wife, and WEITZ &
SONS, LLC, and Idaho limited liability
company,

Plaintiffs,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife, STEVEN R.
SHOOK and MARY E. SILVERNALE
SHOOK, DANIAL T. CASTLE and
CATHERINE C. CASTLE, and U.S.
BANK, N.A.,

Defendants.

TODD A. GREEN and TONIA L.
GREEN, husband and wife, STEVEN R.
SHOOK and MARY E. SILVERNALE
SHOOK, DANIAL T. CASTLE and
CATHERINE C. CASTLE,

Counter-Plaintiffs,

vs.

GERALD E. WEITZ and CONSUELO J.
WEITZ, husband and wife, and WEITZ &
SONS, LLC, and Idaho limited liability
company,

Counter-Defendants.

Case No. CV-04-00080

APPEARANCES:

Plaintiffs represented by counsel,
Charles Brown, Lewiston, ID

Defendants Todd Green and Steven R.
Shook represented by counsel,
Andrew M. Schwam, Moscow, ID
Robert M. Magyar, Moscow, ID

Subject of Proceedings: Motion for Release of Bond, Motion to Make Injunction Permanent and
Motion for Additional Costs and Attorneys Fees

Terry Odenborg
Deputy Clerk

This being the time fixed pursuant to written notice for hearing of the defendants' motion for release of bond, motion to make injunction permanent and motion for additional costs and attorneys fees in this case, Court noted the presence of counsel.

Mr. Schwam argued in support of defendants/counter-plaintiffs' Motion to Release Their Bond and to Make the Preliminary Injunction Issued by the Court Against Plaintiffs Permanent. Mr. Brown argued in opposition to the return of the bond unless the injunction is removed. Mr. Schwam argued in support of the defendant's motion to make the preliminary injunction permanent. Court granted the motion for return of bond, instructing Mr. Schwam to prepare an order in accordance with its ruling. Court denied the motion to make the injunction permanent, instructing Mr. Schwam to prepare an order in accordance with its ruling.

Mr. Schwam argued in support of the defendants' motion for an award of additional costs and attorney fees. Mr. Brown argued in opposition to the motion. Mr. Schwam argued in rebuttal. Court took the motion under advisement and informed counsel that it would render its ruling in writing.

Court recessed at 3:24 P.M.

APPROVED BY:


JOHN R. STEGNER
DISTRICT JUDGE

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)

v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

ORDER TERMINATING PRELIMINARY
INJUNCTION AND DENYING
DEFENDANTS/COUNTERPLAINTIFFS'
MOTION TO MAKE PRELIMINARY
INJUNCTION PERMANENT

A Preliminary Injunction was issued by the Court in this matter in favor of Defendants/Counterplaintiffs on April 18, 2005. Defendants/Counterplaintiffs brought on for hearing their Motion To Make the Preliminary Injunction Permanent on August 2, 2006. Argument was produced by Defendants/Counterplaintiffs in support of their Motion, and by

CASE NO. CV 2004-86

2006 AUG -7 AM 8:21

CLERK OF DISTRICT COURT
LATAH COUNTY
BY Da DEPUTY

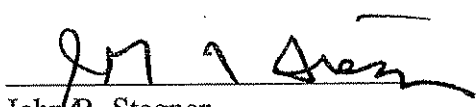
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1696

Plaintiffs/Counterdefendants in opposition to said Motion.

The Court being fully informed, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Preliminary Injunction issued by the Court on April 18, 2005 is terminated, and Defendants/Counterplaintiffs' Motion to make the Preliminary Injunction permanent is denied.

DATED this 4th day of August, 2006.


John R. Stegner
District Judge

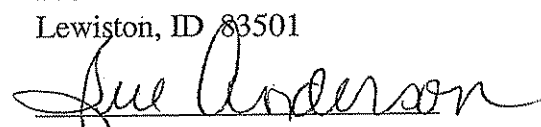
CERTIFICATE OF SERVICE

I do hereby certify that a full, true and correct copy of the foregoing ORDER TERMINATING PRELIMINARY INJUNCTION was mailed on this 7 day of August, 2006 to:

Robert M. Magyar
Attorney at Law
P.O. Box 8074
Moscow, Idaho 83843

Andrew Schwam
Attorney at Law
514 South Polk
Moscow, Idaho 83843

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501


Sue Anderson
Deputy Clerk

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)
v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)
_____)

Case No. CV-04-000080

ORDER EXONERATING BOND
AND RELEASING BOND TO
DEFENDANTS/COUNTERPLAINTIFFS

A Preliminary Injunction was issued by the Court in this matter in favor of Defendants/Counterplaintiffs on April 18, 2005, and Todd Green posted a \$5,000.00 bond pursuant to said Preliminary Injunction. Defendants/Counterplaintiffs brought on for hearing their Motion To Release Bond on August 2, 2006. Argument was produced by Defendants/Counterplaintiffs in

CASE NO. CV-2004-80

2006 AUG -7 AM 8:21

CLERK OF DISTRICT COURT
LATAH COUNTY

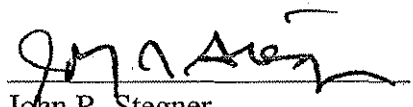
BY DA DEPUTY

support of their Motion, and by Plaintiffs/Counterdefendants in opposition to said Motion.

The Court being fully informed, and good cause appearing therefor,

IT IS HEREBY ORDERED that the bond posted by Todd Green for Defendants/Counterplaintiffs on April 18, 2005 is exonerated and the Clerk of the District Court of Latah County is ordered to refund the \$5000.00 to Todd Green.

DATED this 7th day of August, 2006.


Joan R. Stegner
District Judge

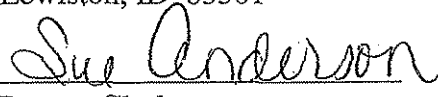
CERTIFICATE OF SERVICE

I do hereby certify that a full, true and correct copy of the foregoing ORDER RELEASING BOND was mailed on this 7 day of August, 2006 to:

Robert M. Magyar
Attorney at Law
P.O. Box 8074
Moscow, Idaho 83843

Andrew Schwam
Attorney at Law
514 South Polk
Moscow, Idaho 83843

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501


Deputy Clerk

CASE NO. CV-04-00080

2006 SEP 28 PM 2: 25

CLERK OF DISTRICT COURT
LATAH COUNTY

BY SU DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO J. WEITZ,)
husband and wife, and WEITZ & SONS, LLC,)
an Idaho limited liability company,)

Plaintiffs

v.

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK and)
MARY E. SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C. CASTLE,)
and U.S. BANK, N.A.,)

Defendants

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK and)
MARY E. SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C. CASTLE,)

Counterplaintiffs,

v.

GERALD E. WEITZ and CONSUELO J. WEITZ,)
husband and wife, and WEITZ & SONS, LLC,)
an Idaho limited liability company,)

Counterdefendants.

Case No. CV-04-00080

OPINION AND ORDER

BACKGROUND

This case involves a boundary dispute over two adjoining sections of land on

Moscow Mountain in Latah County. The Weitz family,¹ claiming ownership of the disputed property based on their family history and association with the property, brought a complaint against the defendants on February 4, 2004. At trial, the Weitz family made the following claims: boundary by agreement; prescriptive easement; equitable estoppel and quasi estoppel. (The Weitz family also asserted the defense that Todd and Tonya Green were not *bona fide* purchasers.) In response to the plaintiffs' complaint, the defendants, Todd and Tonya Green, Steven and Mary Silvernale Shook, and Danial and Catherine Castle, filed a counterclaim and sought the following relief: quiet title to the disputed property; damages for timber trespass; and damages for slander of title.

While this matter was in litigation, the Weitz family continued to use the disputed property under a claim of right despite the Greens' requests for them to cease. Due to the Weitz family's efforts to exercise dominion over the property, the Greens filed a motion for injunctive relief. On April 15, 2005, a hearing was held on the Greens' Motion for a Preliminary Injunction. This Court determined that the Greens had established all the elements required by Rule 65, I.R.C.P., for the issuance of a preliminary injunction, and, consequently, issued an injunction enjoining the Weitz family on April 18, 2005. The injunction prevented all plaintiffs, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, from going on the disputed property during the pendency of this action. The Greens were required to post \$5,000 as security for the issuance of the injunction.

¹ For the sake of simplicity, the plaintiffs, Gerald Weitz, Consuelo Weitz and Weitz and Sons, LLC, will be referred to as the "Weitz family." Gerald and Consuelo Weitz are husband and wife. Gerald Weitz, Consuelo Weitz, and their two sons, Rockford and Dustin, are the shareholders in Weitz and Sons, LLC.

Following failed attempts at settlement, a bench trial was held to resolve the issues between the parties. Based upon the evidence, this Court denied all of the claims brought by the Weitz family and quieted title in the disputed property to the Greens, Castles and Shooks. In addition, this Court awarded the Greens, Castles and Shooks \$500 each for the timber trespass they experienced; however, this Court denied the relief sought for treble damages as a result of the timber trespass. This Court also concluded that special damages were not appropriate under the defendants' slander of title cause of action.

The Greens² filed a Motion to Clarify, Correct and Reconsider, requesting that this Court review its Memorandum Decision and alter it. Specifically, the Greens alleged that evidence in the record proved that: (1) the timber trespass attributed to the Weitz family was willful and intentional; and (2) the Greens had established the four elements essential to their slander of title action. This Court concluded that the timber trespass had not been willful and intentional. As a result, this Court's prior decision regarding timber trespass remained unchanged. However, as to the Greens' latter assertion, this Court found that the Weitz family had been reckless in their challenge to the defendants' title and, therefore, malice had been established. Furthermore, this Court determined that the attorneys' fees incurred by the Greens to challenge the cloud on their title constituted special damages. As a consequence, this Court issued an Amended Memorandum Decision on June 28, 2006, ruling that the Greens had proven that the Weitz family slandered the defendants' title and awarded the Greens \$40,000 in attorneys' fees incurred to clear title to their property as special damages. See Order Awarding Defendants/Counter-Plaintiffs Costs and

² Due to the unique posture of this case, in that the Greens have agreed to bear the expense of litigation, the Castles and the Shooks are not affected by these pending post-trial motions.

Attorneys' Fees at 6.

The following motions are pending: Motion for an Award of Costs as Special Damages Under Slander of Title Cause of Action; and Motion for an Award of Additional Attorneys Fees as Special Damages Under Slander of Title Cause of Action. This Court heard oral argument on the Greens' motions on August 7, 2006. At the hearing, Andrew Schwam and Robert Magyar appeared on behalf of the Greens. Charles Brown appeared on behalf of the Weitz family.

ANALYSIS

The Greens present two motions to this Court. First, the Greens request \$7,248.64 in costs as special damages under their slander of title action. Second, the Greens seek an award of additional attorneys' fees in the amount of \$340 and a portion of the \$8,280 incurred by the Greens for general legal representation from March 31, 2006 through July 10, 2006, as special damages under their slander of title action. Each motion will be dealt with in turn.

A. Motion for Costs as Special Damages

"Idaho law requires that special damages be alleged and proven before a plaintiff can recover for slander of title." *Crosby v. Rowand Machinery Co.*, 111 Idaho 939, 941, 729 P.2d 414, 416, n.3 (Ct. App. 1986). Litigation expenses incurred in removing the effects of slander have been held to constitute proof of special damages in a slander of title cause action. See *Rayl v. Shull Enterprises, Inc.*, 108 Idaho 524, 530, 700 P.2d 567, 573 (1984). However, "[i]t is *only* the costs of actions taken to clear a plaintiff's [sic] title and such other expenses that are *reasonably necessary* to counteract the disparagement that are appropriately characterized as 'special damages' for which the tortfeasor should bear

liability." *Colquhoun v. Weber*, 684 A.2d 405, 411 (Me. Sup. Ct. 1996) (citing PROSSER AND KEETON ON THE LAW OF TORTS § 128 (5th ed. 1984), Restatement (Second) of Torts § 633(1)(b) (1977); James O. Pearson, Jr., Annotation, *What Constitutes Special Damages in Action for Slander of Title*, 4 A.L.R. 4th 552, 562 (1981 & Supp. 1995)) (italics added).

Here, the Greens have requested \$7,248.64 in costs expended for trial as special damages. Even though these litigation expenses were previously denied by this Court pursuant to a motion for discretionary costs under I.R.C.P. 54(b), the Greens assert they are awardable as special damages under their slander of title cause of action. The amounts sought are broken down as follows: costs to obtain aerial photographs -- Potlatch Corp., National Air Survey Center Corp., and USDA- FSA Aerial Photo Filed Office, \$401.30; additional costs for digital photographs -- Kits Camera, \$614.43; additional costs for digital photographs advanced by attorney Robert Magyar, \$32.00; additional costs for digital photos, copies from clerk, binders and large copies advanced by attorney Andrew Schwam, \$152.11; additional costs for photos to obtain color, black and white copies, Avery tabs, and binders, \$61.80; costs to obtain aerial photographs -- Joseph J. Ulliman, \$2,817.00; and additional expert witness fees -- Ronald P. Monson, \$3,170.00.

The costs incurred by the Greens to obtain and prepare aerial photographs for use at trial were not "reasonably necessary" to remove the cloud on their title. The case could have been proven without the use of aerial photos. Consequently, the costs associated with the photographs do not constitute special damages under the Greens' slander of title cause of action. Even though the Greens would not have incurred these expenses but for the Weitz family's slander of their title, the Weitz family should not bear liability for litigation costs piled on that were not reasonably necessary to remove the effects of the

slander. See *Colquhoun*, 684 A.2d at 411. Therefore, the Greens' request for \$4,068.64 in costs incurred to obtain and prepare aerial photographs for trial as special damages under their slander of title action is denied.

In addition, the expert witness testimony of Ronald P. Monson was not "reasonably necessary" to resolve the boundary dispute. In this Court's view, the Greens could have proven their case without Mr. Monson's testimony. Consequently, this expense was not reasonably necessary to defend their title.

B. Motion for Additional Attorney Fees as Special Damages

In *Rayl v. Shull Enterprises, Inc.*, 108 Idaho 524, 700 P.2d 567 (1984), the Idaho Supreme Court held that attorneys' fees are recoverable as special damages under a slander of title cause of action. *Id.* at 530, 700 P.2d at 573. However, it must be emphasized that attorneys' fees in the action for slander of title itself cannot constitute the required special damages. See *Colquhoun*, 684 A.2d at 411 (citing 50 AM.JUR.2d Libel and Slander § 557 (1995)). "The prevailing party in a slander of title action may recover as special damages those attorney fees . . . incurred to remove the cloud on the title but not those incurred to prosecute the slander of title action." *Id.* (citing PROSSER AND KEETON ON THE LAW OF TORTS § 128 (5th ed. 1984), Restatement (Second) of Torts § 633(1)(b) (1977); James O. Pearson, Jr., Annotation, *What Constitutes Special Damages in Action for Slander of Title*, 4 A.L.R. 4th 552, 562 (1981 & Supp. 1995)).

In this case, the Greens request two categories of additional attorneys' fees as special damages under their slander of title cause of action. First, they seek \$340 in attorneys' fees incurred solely to prepare their motion for an award of costs as special damages pursuant to this Court's Order Awarding Defendants/ Counter-Plaintiffs Costs and Attorneys' Fees

filed on June 28, 2006. In addition, the Greens ask this Court to award a portion of the \$8,280 in legal fees incurred for general representation since March 31, 2006 (the last date of billing submitted in Greens' original verified Memorandum of Costs) through July 10, 2006, that it determines attributable to their slander of title action.

The additional attorneys' fees requested by the Greens were incurred *after* this Court quieted title. As a result of this Court's Memorandum Decision filed on January 9, 2006, the cloud on the Greens' title was removed. Any attorneys' fees incurred subsequently by the Greens' were to prosecute their slander of title action. Since the requested additional attorneys' fees were not spent toward *removing* the effects of the slander, they do not constitute special damages. See 50 AM.JUR.2d Libel and Slander § 557 (1995). Therefore, this Court finds that the attorneys' fees sought which were incurred after January 9, 2006, are not awardable.

ORDER

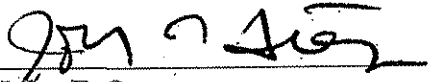
IT IS ORDERED that the Green's motion for \$7,248.64 in costs as special damages under their slander of title cause of action is DENIED. This Court finds that the requested costs were not "reasonably necessary" to clear title to the defendants' property.

IT IS FURTHER ORDERED that the Greens' motion for additional attorneys' fees as special damages is DENIED. The attorneys' fees sought by the Greens were incurred after the cloud on their title was removed and, therefore, are not recoverable as special damages under a slander of title cause of action.

Counsel for the defendants are directed to submit a judgment which will

effectuate all of this Court's rulings in this matter.

DATED this 28th day of September, 2006.


John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true,
complete and correct copy of the foregoing
OPINION AND ORDER was mailed to:

CHARLES A. BROWN
ATTORNEY AT LAW
P.O. BOX 1225
LEWISTON, ID 83501

ROBERT M. MAGYAR
ATTORNEY AT LAW
PO BOX 8074
MOSCOW, ID 83843

ANDREW SCHWAM
ATTORNEY AT LAW
514 SOUTH POLK STREET
MOSCOW, ID 83843

on this 28 day of September, 2006.


Deputy Clerk

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone
(208) 882-1908 Facsimile

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Defendants/Counterplaintiffs: Greens, Shooks and Castles.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/Counterdefendants,)
v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/Counterplaintiffs.)

Case No. CV-04-000080

JUDGMENT AGAINST
PLAINTIFFS/COUNTERDEFENDANTS
QUIETING TITLE IN
DEFENDANTS/COUNTERPLAINTIFFS
AND AWARDING DAMAGES AND
COSTS

On June 28, 2006, the Court entered its AMENDED MEMORANDUM DECISION and its
ORDER AWARDING DEFENDANTS/COUNTER-PLAINTIFFS COSTS AND ATTORNEYS'

CASE NO. CV 2004-00080

2006 OCT 17 PM 4:09

CLERK OF DISTRICT COURT
LATAH COUNTY

BY pa DEPUTY

FEES. On September 28, 2006, the Court entered its OPINION AND ORDER denying Defendants'/Counterplaintiffs' request for an award for further costs and attorneys fees. Defendant U.S. Bank N.A. has played no part whatsoever in this action, has had no interest in this lawsuit, and is dismissed as a defendant.

JUDGMENT

1. IT IS HEREBY ADJUDGED AND DECREED that Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, take nothing on all of their claims.

IT IS FURTHER ADJUDGED AND DECREED that the property line between the properties owned by Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, and Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, is as is set out in their respective deeds, and any claim that the property line follows some other path based upon a claim of boundary by agreement or acquiesce is denied. Title to the property described in Defendants' respective deeds is quieted in Defendants.

2. IT IS FURTHER ADJUDGED AND DECREED that Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company have failed to demonstrate a right to any prescriptive easement across or on property belonging to Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife. Thus the property belonging to Defendants TODD A.

GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, adjoining the property belonging to Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, is not subject to any prescriptive easement in favor of Plaintiffs or the property they own. Title to the property described in Defendants' respective deeds is quieted in Defendants free of any prescriptive easements in favor of Plaintiffs or Plaintiffs' property.

3. IT IS FURTHER ADJUDGED AND DECREED that Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, trespassed upon the property of Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, the property of Defendants STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and the property of Defendants DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, and caused damage.

IT IS FURTHER ADJUDGED AND DECREED, as damages for the foregoing trespass, TODD A. GREEN and TONIA L. GREEN, husband and wife, are awarded FIVE HUNDRED DOLLARS (\$500.00) damages against GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife; STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, are awarded FIVE HUNDRED DOLLARS (\$500.00) damages against GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife; and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, are awarded FIVE HUNDRED DOLLARS (\$500.00) damages against GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife.

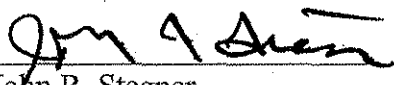
4. IT IS FURTHER ADJUDGED AND DECREED that Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability

company, have slandered the title of Defendants and that Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, have suffered special damages.

IT IS FURTHER ADJUDGED AND DECREED that as special damages the Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, are hereby awarded a judgment against Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, for FORTY THOUSAND DOLLARS (\$40,000.00) in attorneys fees.

5. IT IS FURTHER ADJUDGED AND DECREED that Defendants TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, husband and wife, and DANIAL T. CASTLE and CATHERINE C. CASTLE, husband and wife, are awarded a judgment against Plaintiffs GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company for costs in the amount of TWELVE THOUSAND TWO HUNDRED THIRTY-EIGHT DOLLARS AND TWELVE CENTS (\$12,238.12).

DATED this 17th day of October, 2006.


John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that a full, true and correct copy of the foregoing JUDGMENT was mailed

to:

Robert M. Magyar
P.O. Box 8074
Moscow, Idaho 83843

Andrew Schwam
514 South Polk St. #6
Moscow, Idaho 83843

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

on this 17 day of October, 2006.


Deputy Clerk

CASE NO. CV-2004-80

2006 NOV 16 AM 11:47

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AN DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street.
P.O. Box 1225
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208-746-9947
208-746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife)
and WEITZ & SONS, LLC, an)
Idaho limited liability)
company,)
Plaintiffs/)
Counterdefendants/)
Appellants,)

vs.)

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)
GREEN, husband and wife,)
STEVEN R. SHOOK and MARY E.)
SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C.)
CASTLE, and U.S. BANK N.A.,)
Defendants/)
Counterplaintiffs/)
Respondents.)

Fee Category: T
Fee: \$15.00 to District Court
\$86.00 to Idaho Supreme Court

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, TODD A. GREEN and TONIA L. GREEN, STEVEN R. SHOOK and MARY E. SILVERNALESHOOK, DANIAL T. CASTLE and CATHERINE C. CASTLE, and their Attorneys of Record, ROBERT M. MAGYAR and ANDREW M. SCHWAM, AND THE CLERK OF THE ABOVE-ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellants GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, appeal against the above-named respondents to the Idaho Supreme Court from the Judgment Against Plaintiffs/Counterdefendants Quieting Title in Defendants/Counterplaintiffs and Awarding Damages and Costs entered in the above-entitled action on the 17th day of October, 2006, the Honorable John R. Stegner, District Judge, presiding, and also that certain Memorandum Decision, dated January 9, 2006; that certain Amended Memorandum Decision, dated June 28, 2006; Order Awarding Defendants/Counter-Plaintiffs Costs and Attorneys' Fees, dated June 28, 2006; and that certain Opinion and Order, dated September 28, 2006.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. The appellants' claim for boundary by agreement and/or acquiescence, estoppel and latches, prescriptive easement, and quasi estoppel were incorrectly dismissed by the District Judge, appellants' motion to amend to allow a claim for adverse possession was incorrectly denied, and thus the quieting of title to defendants/respondents was also in error as was the failure to quiet title in the name of the appellants; also, the Court's finding of Slander of Title and the awarding of attorney fees and costs to the respondents is not appropriate; the finding of trespass as to Gerald E. Weitz and Consuelo J. Weitz and the award of damages against them was also in error; further, the appellants' claim for trespass and damages was incorrectly dismissed by the District Judge; as to all of the above, other reasons will be set forth in the briefing.

4. Has an order been entered sealing all or any portion of the record? If so, what portions? Not applicable.

5. (a) Is a reporter's transcript requested? Yes

(b) The appellants request the preparation of the following portions of the

reporter's transcript: in addition to the entire Reporter's Standard Transcript as defined by I.A.R. 25(c), the following is requested: A transcript of the hearings held on the following dates:

11/15/2004 - Motion to Amend Counterclaim;

04/15/2005 - Preliminary Injunction;

06/27/2005 - Various Motions, i.e.:

Objection to & Motion to Strike Plaintiffs' Supplemental Witness List

Motion to Permit Access to Plaintiffs' Property by Defendants to Date Fence Remnants (stayed)

Motion for Order to Examine Disputed Property

Motion in Limine

Motion for Leave to Amend Complaint and Reply to Counterclaim (adding Adverse Possession and Equitable Estoppel claims)

Motion to Supplement Witness List

Motion for Leave to Amend Complaint Due to Typographical Error

Motion to Quash Brower Subpoena;

07/18/2005 - Various Motions, i.e.:

Motion to Permit Access to Plaintiffs' Property By Defendants to Date Fence Remnants

Motion to Clarify Order

Motion to Allow Plaintiffs' Expert Access to Disputed Property and Upon Undisputed Property fo Defendants' Within 20 Feet of the Disputed Fence;

08/29/2005 - Various Motions:

Motion for Reconsideration of Order Denying Plaitniffs' Motion for Leave to Amend Complaint

Motion for Permission to go Upon Disputed Property by Mr. Brown and Plaintiffs' Witnesses

Objection to and Motion to Strike Affidavits and Declarations and Plaintiffs' Reply Brief;

09/09/2005 - Interim Hearing;

09/27/2005 - Pretrial Conference inclusive of Motion for Reconsideration or Order Denying Plaintiffs' Motion to Amend Complaint to Add Claim for Estoppel;

10/03/2005 - first day of trial;

10/04/2005 - second day of trial;

10/05/2005 - third day of trial;

10/06/2005 - fourth day of trial;

10/07/2005 - fifth day of trial;

Opening and closing arguments of counsel at trial

04/25/2006 - Various Motions, i.e.:

Motion to Clarify, Correct and Reconsider

Motion for Award of Reasonable Attorney Fees

Plaintiffs' Motion to Disallow Request for Costs and Attorney Fees

Plaintiffs' Motion to Strike Affidavits of Green, Shook & Castle

05/09/2006 - Motion for Attorney Fees and Costs;

08/02/2006 - Various Motions, i.e.:

Motion for Award of Attorney Fees and Costs as Special Damages and

Make Preliminary Injunction Permanent and for Release of Bond

6. The appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.: in addition to the Standard Record, those documents set forth on Exhibit "A" attached hereto and incorporated herein as though fully set forth herein.

7. I certify:

(a) That a copy of this Notice of Appeal has been served on the reporter.

(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to

Rule 20.

DATED on this 15th day of November, 2006.



Charles A. Brown
Attorney for Appellants.

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

☒ mailed by regular first class mail,
and deposited in the United States
Post Office

☐ sent by facsimile only
to: 208-882-1908 - Magyar
208-882-4190 - Schwam

☐ sent by facsimile and mailed by
regular first class mail,
deposited in the United States
Post Office

☐ sent by Federal Express,
overnight delivery

☐ hand delivered

to: Robert M. Magyar
Attorney at Law
201 N. Main Street, Suite 200
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

Jodi M. Stordiau, Reporter
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

on this 15th day of November, 2006.




EXHIBIT "A"

WEITZ ET AL. v. GREEN ET AL.

Documents to be Included in Clerk's Record

Items in Blue were filed by the Plaintiffs/Counterdefendants

Items in Red were filed by the Defendants/Counterplaintiffs

Items in Green were filed jointly by the parties

Items in Black are Court orders/documents

Some items in parenthesis are added for clarification

02/04/04	Complaint (with demand for jury trial)
03/30/04	Answer and Counterclaim of Defendants Greens, Shooks and Castles
04/23/04	Reply
09/28/04	Motion to Amend Counterclaim of Defendants Greens, Shooks & Castles
	Memorandum in Support of Defendants/Counterplaintiffs' Motion to Amend
10/01/04	Order Setting Planning and Scheduling Conference Rule 16(b)
11/15/04	Order Permitting Defendants/Counterplaintiffs to Amend Counterclaim
11/16/04	First Pretrial Order/Order Setting Trial
03/01/05	Plaintiffs' Expert Witness Disclosures
03/29/05	Defendants - Counterplaintiffs' Application for a Preliminary Injunction
04/01/05	Affidavit of Todd A. Green
	Affidavit of Steven R. Shook
	Memorandum in Support of Defendants - Counterplaintiffs Application for a Preliminary Injunction
04/12/05	Affidavit of Harold L. Osborne
	Affidavit of Gerald E. Weitz
	Affidavit of Consuelo J. Weitz
	Brief in Response to Motion for Preliminary Injunction

Addendum to Memorandum in Support of Defendants - Counterplaintiffs' Application for
a Preliminary Injunction/Additional Case Law

04/18/05 Preliminary Injunction I.R.C.P. 65
Evidentiary Order

05/02/05 Plaintiffs' Lay Witness Disclosure

05/20/05 Motion and Stipulation to Amend First Pretrial Order Re: Defendants Witness Disclosures

05/24/05 Order Amending First Pretrial Order Re: Defendants Witness Disclosures

05/27/05 Plaintiffs' Supplemental Witness List

05/31/05 Substitution of Counsel (Charles A. Brown for Ronald J. Landeck)

06/02/05 Objection to and Motion to Strike Plaintiffs' Supplemental Witness List

06/03/05 Motion to Permit Access by Defendants and Their Experts to Plaintiffs' Property for the
Purpose of Dating Fence Remnants That Follow the True Boundary Line Between
the Parties' Properties

06/10/05 Motion for Order to Examine Disputed Property
Affidavit of Charles A. Brown in Support of Plaintiffs' Motion to Examine Disputed
Property
Motion for Leave to Amend Complaint and Reply to Counterclaim
Motion in Limine
Affidavit of Ronald J. Landeck in Support of Plaintiffs' Motions

06/15/05 Motion to Supplement Witness List

06/20/05 Response to Objection to and Motion to Strike Plaintiffs' Supplemental Witness List
Defendants/Counterplaintiffs Response to Motions: for Leave to Amend/to Examine
Property/in Limine
Affidavit of Steven R. Shook Re: Weitz' Adverse Possession Claim/Motion to Examine the
Disputed Property/Equitable Estoppel Claim
Affidavit of Todd A. Green in Response to Affidavit of Ron Landeck and Motion in Limine

Affidavit of Todd A. Green Re: Agreement with Rogers Trust/Re: Weitz Equitable Estoppel Claim

Affidavit of Todd A. Green Re: Weitz' Adverse Possession Claim/Motion to Examine the Disputed Property/Motion in Limine

Defendants/Counterplaintiffs Response to Motions: for Leave to Amend/to Examine Property/in Limine

06/22/05 Motion for Leave to Amend Complaint Due to Typographical Error

06/24/05 Acknowledgment of Service by Robert L. Brower, Esq.

Subpoena (Returned) Duces Tecum to Robert L. Brower, Esq.

Notice of Taking Deposition Duces Tecum of Robert L. Brower, Esq.

Motion to Quash Brower Subpoena

Affidavit of Robert M. Magyar

Additional Attachments to Defendants/Counterplaintiffs Response to Motions: for Leave to Amend/to Examine/in Limine

07/01/05 Defendants/Counterplaintiffs' Lay Witness Disclosures

Defendants/Counterplaintiffs' Expert Witness Disclosures

07/12/05 Motion to Clarify Order

Motion to Permit Access by Defendants and Their Experts to Plaintiffs' Property for the Purpose of Dating Fence Remnants Near the True Boundary Line Between the Parties' Properties

Defendants/Counterplaintiffs' Addendum to Expert Witness Disclosures

07/15/05 Plaintiffs/Counterdefendants' Rebuttal Expert Witness Disclosures

Motion to Allow Plaintiffs' Expert Access to the Disputed Property and Upon the Undisputed Property of the Defendants Within 20 Feet of the Disputed Fence

Affidavit of James Edward Weitz

Response to Defendants' Motion to Allow Access and in Support of Motion to Allow Plaintiffs' Expert Access to the Disputed Property and Upon the Undisputed Property of the Defendants Within 20 Feet of the Disputed Fence

Affidavit of Consuelo J. Weitz in Support of Motion to Allow Plaintiffs' Expert Access to the Disputed Property and Upon the Undisputed Property of the Defendants Within 20 Feet of the Disputed Fence

07/18/05

Order Granting Plaintiffs' Motion to Amend Complaint Due to Typographical Error

Order Granting Plaintiffs' Motion to Supplement Witness List

Order Denying Defendants' Objection to and Motion to Strike Plaintiffs' Supplemental Witness List

Order Denying Defendants' Motion to Quash Brower Subpoena

Order Denying Plaintiffs' Motion for Leave to Amend Complaint and Reply to Counterclaim

Order Denying Plaintiffs' Motion in Limine

Order Allowing Charles A. Brown to Examine Disputed Property

08/01/05

Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend Complaint and Reply to Counterclaim

Affidavit of Consuelo J. Weitz in Support of Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend Complaint and Reply to Counterclaim

08/09/05

Order Denying Defendants' Motion to Clarify Order

08/12/05

Defendants/Counterplaintiffs' Memorandum in Response to Plaintiffs' Motion to Allow Plaintiffs' Expert Access to the Disputed Property/in Response to Plaintiffs' Motion to Reconsider

Affidavit of Todd A. Green in Response to Plaintiffs' Motion to Allow Plaintiffs' Expert Access to the Disputed Property/in Response to Plaintiffs' Motion to Reconsider

Affidavit of Steven R. Shook in Response to Plaintiffs' Motion to Allow Plaintiffs' Expert Access to the Disputed Property/in Response to Plaintiffs' Motion to Reconsider

Affidavit of Ronald P. Monson in Response to Plaintiffs' Motion to Allow Plaintiffs' Expert Access to the Disputed Property/in Response to Plaintiffs' Motion to Reconsider

08/15/05

Plaintiffs' Motion for Permission to go Upon Disputed Property by Mr. Brown and Plaintiffs' Witnesses

Plaintiffs' Brief in Support of Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend Complaint and Reply to Counterclaim

08/19/05 Defendants/Counterplaintiffs' Memorandum in Response to Plaintiffs' Brief in Support of Plaintiffs' Motion to Reconsider

Affidavit of Willemmina Kardong in Response to Plaintiffs' Motion to Reconsider

Affidavit of Wayne A. Fox in Response to Plaintiffs' Motion to Allow Plaintiffs' Expert Access to the Disputed Property/in Response to Plaintiffs' Motion to Reconsider

08/22/05 Affidavit in Reply to Defendants' Pleadings (Steve A. Fiscus)

Affidavit of Charles A. Brown (copies of assessments and warranty deeds)

Affidavit in Reply to Defendants' Pleadings (Curtis Wiggins)

Affidavit in Reply to Defendants' Pleadings (Rockford Weitz)

Affidavit in Reply to Defendants' Pleadings (Gerald Weitz)

Affidavit in Reply to Defendants' Pleadings (Dustin Weitz)

Affidavit in Reply to Defendants' Pleadings (Jeff Schoepflin)

Affidavit in Reply to Defendants' Pleadings (Mary Smetana)

Affidavit in Reply to Defendants' Pleadings (Nancy Flisher)

Declaration in Reply to Defendants' Pleadings (Jeremiah Carlson)

Declaration in Reply to Defendants' Pleadings (Chuck Goetz)

Declaration in Reply to Defendants' Pleadings (Josh Ritter)

Declaration in Reply to Defendants' Pleadings (Guy Nearing)

Affidavit in Reply to Defendants' Pleadings (Nikki Goetz)

Affidavit in Reply to Defendants' Pleadings (Robert Thomas)

Declaration in Reply to Defendants' Pleadings (Travis Teigen)

Declaration in Reply to Defendants' Pleadings (Michael Barber)

Affidavit in Reply to Defendants' Pleadings (Norman Clark)

Affidavit in Reply to Defendants' Pleadings (Jack Freeland)

Declaration in Reply to Defendants' Pleadings (John Goetz)

Declaration in Reply to Defendants' Pleadings (Dale Schoepflin)

Affidavit in Reply to Defendants' Pleadings (Allen Drew)

Declaration in Reply to Defendants' Pleadings (Walter Carlson)

Affidavit in Reply to Defendants' Pleadings (Tom McKinney)

08/23/05 Affidavit of Charles A. Brown

08/24/05 Affidavit in Reply to Defendants' Pleadings: Homer Ferguson

08/25/05 Affidavit in Reply to Defendants' Pleadings (Afton Swift)

Errata to Plaintiffs' Brief in Support of Motion for Reconsideration of Order Denying
Plaintiffs' Motion to Amend Complaint and Reply to Counterclaim

Plaintiffs' Reply Brief

08/26/05 Objection to and Motion to Strike Affidavits and "Declarations" Filed by Plaintiffs "in
Response to Defendants' Pleadings"/Plaintiffs' Reply Brief

08/29/05 Affidavit of Susan A. Ripley in Response to Plaintiffs' Motion to Reconsider

09/07/05 Notice of Taking Deposition of Josh Ritter

Subpoena Duces Tecum to Robert L. Brower, Esq.

Acknowledgment of Service by Robert L. Brower, Esq.

Amended Notice of Taking Deposition Duces Tecum of Robert L. Brower, Esq.

09/08/05 Order Granting Plaintiffs' Motion for Permission to Go Upon Disputed Property by
Mr. Brown and Plaintiffs' Witnesses (Experts)

Order Granting Plaintiffs' Motion for Permission to Go Upon Disputed Property by
Mr. Brown and Plaintiffs' Witnesses

Order Granting Motion to Allow Plaintiffs' Expert (Priest) Access to the Disputed Property
and Upon the Undisputed Property of the Defendants Within 20 Feet of the
Disputed Fence

09/09/05 Notice of Taking Telephonic Deposition Duces Tecum of Danial T. Castle

Notice of Taking Deposition Duces Tecum of Steven R. Shook

Notice of Taking Deposition Duces Tecum of Todd A. Green

09/12/05 Notice of Providing Notarized Signatures for Affidavits by Declarants

09/22/05 Order Setting Pretrial Conference

09/26/05 Supplemental Notice of Providing Notarized Signatures for Affidavits by Declarants

Plaintiffs' Proposed Witness List and Exhibit List for Trial

Plaintiffs' Motion for Reconsideration of Order Denying Motion to Amend Complaint to Add Claim for Estoppel

Affidavit of Charles A. Brown

Plaintiffs' Brief in Support of Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend Complaint to Add Claim for Estoppel

09/27/05 Defendant's Trial Witness List

Supplement to Defendant/Counterplaintiffs' Expert Witness Disclosure

Order Denying Plaintiffs' Motion for Reconsideration of Order Denying Plaintiffs' Motion to Amend Complaint and Reply to Counterclaim

Order Permitting Access by Defendants and Their Experts to Plaintiffs' Property for the Purpose of Dating Fence Remnants Near the True Boundary Line Between the Parties' Properties

Second Supplement to Defendant/Counterplaintiffs' Expert Witness Disclosure

09/30/05 Plaintiffs' Supplemental Proposed Witness List and Exhibit List for Trial

Defendants' Trial Exhibit List

10/03/05 Defendants/Counterplaintiffs' Trial Memorandum

Order Granting Plaintiffs' Motion for Reconsideration to Amend Complaint to Add Claim for Estoppel

Amended Complaint

10/04/05 Defendant/Counterplaintiffs' Supplement to Trial Memorandum

10/06/05 Plaintiffs' Memorandum in Support of Claim that Defendants are not Bona Fide Purchasers for Value

Plaintiffs' Memorandum in Opposition to Defendants' Claims of Trespass and Slander of Title

Plaintiffs' Memorandum in Support of Boundary by Agreement Claim

Plaintiffs' Memorandum in Support of Quasi Estoppel Claim

01/09/06 Memorandum Decision

01/23/06 Defendants/Counterplaintiffs' Motion to Clarify, Correct and Reconsider

04/03/06 Defendants/Counterplaintiffs' Motion for an Award of Reasonable Attorney Fees Included in the Memorandum of Costs

Affidavit of Andrew Schwam Re: Attorney Fees

Affidavit of Robert M. Magyar Re: Attorney Fees

Defendant/Counterplaintiffs Brief in Support of Motion to Clarify, Correct & Reconsider; in Support of the Request for Attorney Fees and in Support of the Memorandum of Costs

Verified Memorandum of Costs and Attorney Fees

04/05/06 Supplement to Verified Memorandum of Costs and Attorney Fees

04/17/06 Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Plaintiffs' Memorandum in Support of Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Charles A. Brown in Support of (Motion) Plaintiffs' Memorandum in Support of Motion to Disallow Defendants' Request for Costs and Attorney Fees and in Opposition to Defendants' Motion to Clarify, Correct and Reconsider

Plaintiffs' Brief in Opposition to Defendants' Motion to Clarify, Correct and Reconsider

04/19/06 Affidavit of Steven R. Shook in Response to Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Danial T. Castle in Response to Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Todd A. Green in Response to Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

04/25/06 Plaintiffs' Motion to Strike Affidavits of Todd A. Green, Steven R. Shook ,and Danial T. Castle

05/02/06 Affidavit of Charles L. Graham in Support of Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Consuel J. Weitz in Support of Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Rockford Weitz in Support of Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

Affidavit of Ronald J. Landeck in Support of Plaintiffs' Motion to Disallow Defendants' Request for Costs and Attorney Fees

05/05/06 Affidavit of Steven R. Shook

Affidavit of Todd A. Green

Affidavit of Danial T. Castle

~~05/08/06~~ ~~Affidavit of Gerald E. Weitz~~

06/28/06 Amended Memorandum Decision

Order Awarding Defendants/Counterplaintiffs' Costs and Attorneys' Fees

07/19/06 Defendants/Counterplaintiffs Motion for an Award of Costs as Special Damages Under Their Slander of Title Cause of Action

Defendants/Counterplantiffs Motion for an Award of Additional Attorney Fees as Special Damages Under Their Slander of Title Cause of Action (Included in a Supplemental Memorandum of Costs)

Supplemental Verified Memorandum of Costs and Attorney Fees

Affidavit of Robert M. Magyar Re: Additional Attorney Fees

Affidavit of Andrew Schwam Re: Additional Attorney Fees

Defendants' /Counterplaintiffs' Motion to Release Their Bond and to Make the Preliminary Injunction Issued by the Court Against Plaintiffs Permanent

07/28/06 Objection to Defendants/Counterplaintiffs' Motion to Release Their Bond and to Make the Preliminary Injunction Issued by the Court Against Plaintiffs Permanent

Plaintiffs/Counterdefendants' Memorandum in Support of Motion to Disallow Defendants/
Counterplaintiffs' Request for Costs and Attorney Fees as Special Damages Under
Their Slander of Title Cause of Action

Plaintiffs/Counterdefendants' Motion to Disallow Defendant/Counterplaintiffs Request
for Costs and Attorney Fees as Special Damages Under Their Slander of Title
Cause of Action

08/07/06 Order Terminating Preliminary Injunction and Denying Defendants/Counterplaintiffs'
Motion to Make Preliminary Injunction Permanent

Order Exonerating Bond and Releasing Bond to Defendants/Counterplaintiffs

09/28/06 Opinion and Order

10/17/06 Judgment Against Plaintiffs/Counterdefendants Quieting Title in Defendants/
Counterplaintiffs and Awarding Damages and Costs

Also to be included in the clerk's record are:

- All court minutes
- Original deposition transcripts admitted as evidentiary testimony during the course of the trial proceedings
- Documents lodged with the court during post-trial proceedings

CASE NO

CV 2004-80

Nov 16, 2006 11:47 am

CLERK OF DISTRICT COURT

LATAH COUNTY

BY

SK

DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
(208) 746-9947
(208) 746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants/Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)

J. WEITZ, husband and wife)

and WEITZ & SONS, LLC, an)

Idaho limited liability)

company,)

Plaintiffs/)

Counterdefendants/)

Appellants,)

vs.)

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)

GREEN, husband and wife,)

STEVEN R. SHOOK and MARY E.)

SILVERNALE SHOOK, DANIAL T.)

CASTLE and CATHERINE C.)

CASTLE, and U.S. BANK N.A.,)

SUPERSEDEAS BOND

Defendants/)

Counterplaintiffs/)

Respondents.)

SUPERSEDEAS BOND

1

Charles A. Brown, Esq.
P.O. Box 1225/324 Main St.
Lewiston, Idaho 83501
208-746-9947/208-746-5886 (fax)

1728



Bond No. 104825908

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR LATAH COUNTY

GERALD E. WEITZ and CONSUELO J. WEITZ,
Husband and wife, and WEITZ & SONS, LLC,
An Idaho limited liability company
Plaintiffs/Counterdefendants

No. CV-04-000080

vs.

TODD A. GREEN and TONIA L. GREEN, husband
and wife, STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T. CASTLE and
CATHERINE C. CASTLE, and U.S. BANK, N.A.
Defendants/Counterplaintiffs

**SUPERSEDEAS AND
COSTS ON APPEAL BOND**

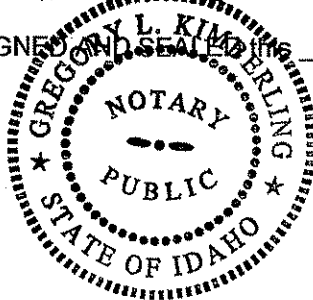
KNOW ALL BY THESE PRESENTS:

That we, GERALD E. WEITZ and CONSUELO J. WEITZ, and WEITZ & SONS, LLC as Principal(s),
and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a Connecticut corporation
authorized to transact surety business in the State of Idaho, as Surety are held and firmly bound unto,
TODD A. GREEN and TONIA L. GREEN, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK,
DANIAL T. CASTLE and CATHERINE C. CASTLE, and U.S. BANK N.A. as Obligee(s), in the penal sum
of ***SEVENTY-FIVE THOUSAND AND NO/100*** (\$75,000.00) DOLLARS, lawful money of the United
States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, legal
representative, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in order to stay said judgment on appeal, the Defendant(s) are required to provide a bond to
the above entitled Court.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That, if the Principal(s)
shall prosecute said action, return said property to Defendant if return be adjudged, pay all costs and
damages which said Defendant may sustain by wrongful prosecution of said action by Principal, and pay
all costs as may be adjudged by court against said Principal (not exceeding the amount of bond stated
above), then this obligation shall be void, otherwise to remain in full force and effect.

SIGNED AND SEALED this 13TH day of October, 20 06.



GERALD E. WEITZ and CONSUELO J. WEITZ, and WEITZ & SONS, LLC

By [Signature] Consuelo Weitz Principal

Approved:

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

By [Signature] Gregory Kimberling Attorney-in-Fact

By: _____
Judge



POWER OF ATTORNEY

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 214439

Certificate No. 000123900

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Greg Kimberling, Jon J. Kimberling, and Susan M. Rigg

of the City of Moscow, State of Idaho, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 17th day of February, 2006.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By: _____

George W. Thompson, Senior Vice President

On this the 17th day of February, 2006, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2006.



Marie C. Tetreault
 Marie C. Tetreault, Notary Public

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

☒ mailed by regular first class mail,
and deposited in the United States
Post Office

☐ sent by facsimile only

☐ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

☐ sent by Federal Express,
overnight delivery

☐ hand delivered

to: Robert M. Magyar
Attorney at Law
201 N. Main Street, Suite 200
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 15th day of November, 2006.

Charles A. Brown

CASE NO. CV 2004-80

2006 NOV 16 AM 11:47

CLERK OF DISTRICT COURT
LATAH COUNTY
BY DEPUTY

Charles A. Brown
Attorney at Law
324 Main Street
P.O. Box 1225
Lewiston, ID 83501
(208) 746-9947
(208) 746-5886 (fax)
ISB # 2129
CharlesABrown@cableone.net
Attorney for Plaintiffs/Counterdefendants/Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife)
and WEITZ & SONS, LLC, an)
Idaho limited liability)
company,)
Plaintiffs/)
Counterdefendants/)
Appellants,)

vs.)

Case No. CV 2004-000080

TODD A. GREEN and TONIA L.)
GREEN, husband and wife,)
STEVEN R. SHOOK and MARY E.)
SILVERNALE SHOOK, DANIAL T.)
CASTLE and CATHERINE C.)
CASTLE, and U.S. BANK N.A.,)
Defendants/)
Counterplaintiffs/)
Respondents.)

**MOTION FOR STAY OF
EXECUTION UPON APPEAL**

MOTION FOR STAY OF EXECUTION
UPON APPEAL

COME NOW the above-named plaintiffs/counterdefendants/appellants in the above-entitled matter by and through their attorney of record, Charles A. Brown, and move this Court for an order staying execution or enforcement of the Judgment Against Plaintiffs/Counterdefendants Quieting Title in Defendants/Counterplaintiffs and Awarding Damages and Costs entered in the above-entitled action. Concurrently with the filing of this motion, the plaintiffs/counterdefendants/appellants have filed a supersedeas bond in the amount of \$75,000.00, which is 36% more of the amount of the judgment as is required by I.A.R. 13(b)(15).

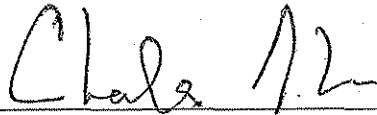
That said motion is made pursuant to I.R.C.P. 62(d) and I.A.R. 13(b)(15) and are based upon the following facts:

- ▶ That concurrently with the filing of this Motion, the plaintiffs/appellants filed a Notice of Appeal.
- ▶ That a judgment in the amount of \$53,738.12 was filed on October 17, 2006.
- ▶ That the appeal filed in the above entitled matter is still pending.
- ▶ That concurrent with the filing of this Motion, plaintiffs/appellants have filed a supersedeas bond.

That the attorneys for the defendants/counterplaintiffs/respondents have indicated that they are willing to enter into a stipulation concerning staying any execution in regard to the Judgment Against Plaintiffs/Counterdefendants Quieting Title in Defendants/Counterplaintiffs and Awarding Damages and Costs entered in the above-entitled matter. If such a stipulation is not forthcoming then, the plaintiffs/appellants request that the Court schedule a hearing on the matter or sign the Order as presented if it meets with the Court's approval.

Oral argument is requested.

DATED on this 15th day of November, 2006.



Charles A. Brown
Attorney for Plaintiffs/Appellants.

I, Charles A. Brown, hereby certify that a true and correct copy of the foregoing was:

☒ mailed by regular first class mail,
and deposited in the United States
Post Office

☐ sent by facsimile only

☐ sent by facsimile, mailed by
regular first class mail, and
deposited in the United States
Post Office

☐ sent by Federal Express,
overnight delivery

☐ hand delivered

to: Robert M. Magyar
Attorney at Law
201 N. Main Street, Suite 200
P.O. Box 8074
Moscow, ID 83843

Andrew M. Schwam, Esq.
Schwam Law Office
514 South Polk Street # 6
Moscow, ID 83843

on this 15th day of November, 2006.

Charles A. Brown

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone

CASE NO. CV 2004-80

2006 NOV 29 PM 4:43

CLERK OF DISTRICT COURT
LATAH COUNTY
BY SA DEPUTY

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Cross-Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Plaintiffs/)
Counterdefendants/)
Cross-Respondents,)

v.)

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Defendants/)
Counterplaintiffs/)
Cross-Appellants.)

Case No. CV-2004-000080

OBJECTION TO BOND AND

MOTION TO REQUIRE
PLAINTIFFS/COUNTERDEFENDANTS/
CROSS-RESPONDENTS TO POST
ADEQUATE BOND

COME NOW DEFENDANTS/COUNTERPLAINTIFFS/CROSS-APPELLANTS, by and through their attorneys, ROBERT M. MAGYAR and ANDREW SCHWAM, and object to the supersedeas bond provided by plaintiffs/counterdefendants/cross-respondents, and Move to require plaintiffs/counterdefendants/cross-respondents to post an adequate supersedeas bond, as follows.

The bond provided by plaintiffs/counterdefendants/cross-respondents indicates that it is a wrongful prosecution bond; and, further, it lacks the language required by Rule 13 (15) of the I.A.R.

That Rule states:

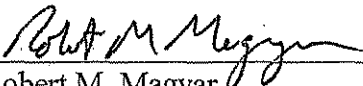
Any bond filed pursuant to this rule shall state that the company issuing or executing the same agrees to pay on behalf of the appellant all sums found to be due and owing by the appellant by reason of the outcome of the appeal, within 30 days of the filing of the remittitur from the Supreme Court, up to the full amount of the bond or undertaking. (Emphasis added)

The bond provided by plaintiffs/counterdefendants/cross-respondents does not contain this language and is therefore not adequate.

This Objection is supported by the bond provided by plaintiffs/counterdefendants/cross-respondents, and by Rule 13 (15) of the I.A.R..

Leave of Court is requested to permit Defendants/Counterplaintiffs to argue at the Hearing of this Motion.

Dated this 27th day of November, 2006.


Robert M. Magyar

Attorney for Defendants/Counterplaintiffs/Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2006, I caused a true and correct copy of the foregoing Objection To Bond And Motion To Require Plaintiffs/Counterdefendants/Cross-Respondents To Post Adequate Bond to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

() Overnight Mail
() U.S. Mail
(x) Facsimile
() Hand Delivery


Robert M. Magyar

MAGYAR LAW FIRM
Robert M. Magyar #1667
530 South Asbury St. - Suite 5
P.O. Box 8074
Moscow, Idaho 83843
(208) 882-1906 Telephone

CASE NO. CV-04-0080

2006 DEC -4 PM 4:31

CLERK OF DISTRICT COURT
LATAH COUNTY
BY RC DEPUTY

SCHWAM LAW FIRM
Andrew Schwam #1573
514 South Polk Street
Moscow, Idaho 83843
(208) 882-4190 Telephone

Attorneys for Cross-Appellants.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO)
J. WEITZ, husband and wife, and WEITZ)
& SONS, LLC, an Idaho limited liability)
company,)

Case No. CV-2004-000080

Plaintiffs/)
Counterdefendants/)
Cross-Respondents,)

v.)

NOTICE OF CROSS-APPEAL

TODD A. GREEN and TONIA L. GREEN,)
husband and wife, STEVEN R. SHOOK)
and MARY E. SILVERNALE SHOOK,)
DANIAL T. CASTLE and CATHERINE)
C. CASTLE, and U.S. BANK N.A.,)

Fee Category: T

Fee: \$15.00 to District Court

\$86.00 to Idaho Supreme Court

Defendants/)
Counterplaintiffs/)
Cross-Appellants.)

TO: THE ABOVE NAMED CROSS-RESPONDENTS, GERALD E. WEITZ and CONSUELO J. WEITZ, husband and wife, and WEITZ & SONS, LLC, an Idaho limited liability company, and their Attorney of Record, CHARLES A. BROWN, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named cross-appellants, TODD A. GREEN and TONIA L. GREEN, husband and wife, STEVEN R. SHOOK and MARY E. SILVERNALE SHOOK, and DANIAL T. CASTLE and CATHERINE C. CASTLE, appeal against the above named cross-respondents to the Idaho Supreme Court from the Judgment Against Plaintiffs/Counterdefendants Quieting Title in Defendants/Counterplaintiffs and Awarding Damages and Costs entered in the above-entitled action on the 17th day of October, 2006, the Honorable John R. Stegner, District Judge, presiding; and also that certain Memorandum Decision, dated January 9, 2006; and that certain Amended Memorandum Decision, dated June 28, 2006; and the Order Awarding Defendants/Counter-Plaintiffs Costs and Attorneys' Fees, dated June 28, 2006; and that certain Opinion and Order dated September 28, 2006.

2. That the party has a right to cross-appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under an pursuant to Rule 11(a)(1) I.A.R.

3. The issues cross-appellants intend to raise on appeal consist two errors in the law relating to cross-appellants trespass action against Weitz. In ruling on cross-appellants' claim under Idaho Code Section 6-202, the trial court made an error in law in finding that the undisputed facts did not constitute willful and intentional conduct. This led to the error of not awarding treble damages and attorney fees under Idaho Code Section 6-202. The trial court made a second legal error in failing to find that the proper measure of damages, in a trespass case of the type at bar, is the cost of restoring the trespass victim's land to the condition it was in before the trespass occurred,

often referred to as restoration cost.

4. (a) Is additional reporter's transcript requested? Not at this time.

(b) The cross-appellant requests the preparation of the following portions of the reporter's transcript in addition to those requested by the appellant in the initial notice of appeal: None at this time.

5. The cross-appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal: No additional documents at this time.

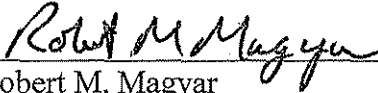
6. I certify:

(a) That a copy of this notice of cross-appeal and any request for additional transcript have been served on the reporter.

(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript and any additional documents requested in the cross appeal.

(c) That service has been made upon all parties required to be served pursuant to Rule 20.

Dated this 4th day of December, 2006.


Robert M. Magyar
Attorney for Cross-Appellants

CERTIFICATE OF SERVICE

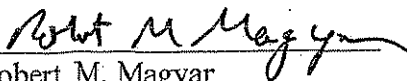
I hereby certify that on this 4th day of December, 2006, I caused a true and correct copy of the foregoing NOTICE OF CROSS-APPEAL to be served on the following in the manner indicated below:

Charles A. Brown
Attorney at Law
P.O. Box 1225
Lewiston, ID 83501

☐ Overnight Mail
☒ U.S. Mail
☒ Facsimile to 208-746-5886
☐ Hand Delivery

Jodi M. Stordiau, Reporter
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

☐ Overnight Mail
☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery


Robert M. Magyar

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife and
WEITZ & SONS, LLC, an Idaho
Limited liability company,

Plaintiffs/Counter-defendants,
Appellants, Cross Respondents,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHREINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/Counter-plaintiffs
Respondents/Cross Appellants.

Supreme Court Case No. 33696

CLERK'S CERTIFICATE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Court at Moscow, Idaho this 17 day of April 2008.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife and
WEITZ & SONS, LLC, an Idaho
Limited liability company,

Plaintiffs/Counter-defendants,
Appellants, Cross Respondents,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHREINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/Counter-plaintiffs
Respondents/Cross Appellants.

Supreme Court Case No. 33696

CLERK'S CERTIFICATE
RE: EXHIBITS MISSING

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that one of the documents listed in Exhibit "A" entitled *Documents to be Included in Clerk's Record*, specifically, the 03/01/05 Plaintiffs' Expert Witness Disclosures are not documents which are contained in the court file, and thus, are not included in this Clerk's Record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 17 day of April, 2008.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

CLERK'S CERTIFICATE RE: MISSING EXHIBITS - 1

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife and
WEITZ & SONS, LLC, an Idaho
Limited liability company,

Plaintiffs/Counter-defendants,
Appellants, Cross Respondents,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHREINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/Counter-plaintiffs
Respondents/Cross Appellants.

Supreme Court Case No. 33696

**CLERK'S CERTIFICATE
RE: EXHIBITS**

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the following trial exhibits:

PLAINTIFF'S EXHIBITS:

- #1 Ronald P. Monson, PLS Record of Survey for Todd Green, Instrument #472606, Plaintiffs' Exhibit 1 at Preliminary Injunction hearing - ADMITTED
- #2 Monson Record of Survey with road ways marked, Exhibit 25 to Deposition of Consuelo J. Weitz - ADMITTED
- #3 Monson Record of Survey with road ways marked by Duane E. Priest, PLS - Andrew Schwam was supplied this on 9/21/05 - ADMITTED
- #4 Aerial map prepared by Duane E. Priest, PLS - Andrew Schwam was supplied this on 9/21/05 - ADMITTED
- #5 Aerial map, Exhibit 2 to Deposition of Consuelo J. Weitz - REJECTED

CLERK'S CERTIFICATE RE: EXHIBITS - 1

- #6 July 2003 calendar of Dana Townsend. Exhibit 22 to Deposition of Dana Townsend - ADMITTED
- #8 Road and Boundary Agreement, Green to Castle, dated February 28, 2003 - ADMITTED
- #9 Road and Boundary Agreement, Green to Shock, dated May 13, 2003 - ADMITTED
- #10 Settlement Agreement and Release of Claims, The Inez H. Rogers Family Trust to Todd A. Green and Tonia L. Green, dated August 1, 2003 - ADMITTED
- #11 Exhibit N submitted by defendants at the preliminary injunction hearing - ADMITTED
- #12 Exhibit 3 attached to Memorandum in Support of Defendants - Counterplaintiffs Application for a Preliminary Injunction - ADMITTED
- #13 Exhibit "A" to Plaintiffs' Complaint - legal description for Tract 4 (Green) - REJECTED
- #14 Exhibit "B" to Plaintiffs' Complaint - legal description for Tract 1 (Shook) - REJECTED
- #15 Exhibit "C" to Plaintiffs' Complaint - legal description for Tract 2 (Shook) - REJECTED
- #16 Disputed property legal description for 8.57 acres - ADMITTED
- #17 Duane Priest's legal description as per red fence line describing Tract 1 - ADMITTED
- #18 Duane Priest's legal description as per red fence line describing Tract 2 - ADMITTED
- #19 Duane Priest' legal description as per red fence line describing Tract 4 - ADMITTED
- #21 Warranty Deed from Meeker to Rogers, Instrument #110970, Affidavit Of Charles A. Brown and Affidavit in Reply to Defendants' Pleadings By Steve A. Fiscus - ADMITTED
- #22 Warranty Deed from Hagan to Schoepflin, Instrument #113310, Affidavit Of Charles A. Brown and Affidavit in Reply to Defendants' Pleadings by Steve A. Fiscus - ADMITTED
- #23 Lease Agreement - Fred J. Lydia Schoepflin to Merrill Hart, dated November 15, 1963, Instrument No. 223359, Exhibit "C" to Affidavit of Consuelo J. Weitz in Support of Plaintiffs' Motion for Reconsideration - ADMITTED
- #24 Agreement - Merrill Hart to County of Latah, Idaho and City of Moscow, Idaho, dated November 15, 1963, Instrument No. 223360, Exhibit "D" to Affidavit of Consuelo J. Weitz in Support of Plaintiffs' Motion for Reconsideration - ADMITTED
- #25 Warranty Deed from Schoepflin to Schoepflin, Instrument #238845, Affidavit of Charles A. Brown and Affidavit in Reply to Defendants' Pleadings by Steve A. Fiscus - ADMITTED

- #26 Warranty Deed from Schoepflin to Weitz, Instrument #287179, Defendants' Exhibit B at Preliminary Injunction hearing - ADMITTED
- #27 Warranty Deed from the Inez H. Rogers Trust to Green, Instrument #467896, Defendants' Exhibit D at Preliminary Injunction hearing - ADMITTED
- #28 Quitclaim Deed from Schoepflin to Yeatts et al., Instrument #469910, Defendants' Exhibit A at Preliminary Injunction hearing - ADMITTED
- #29 Warranty Deed from Yeatts et al. to Weitz & Sons LLC, Instrument #473230, Defendants' Exhibit C at Preliminary Injunction Hearing - ADMITTED
- #30-A Photograph bulldozer used on perimeter road, attached to Affidavit of James Edward Weitz - ADMITTED
- #30-B Photograph bulldozer used on perimeter road, attached to Affidavit of James Edward Weitz - ADMITTED
- #30-C Photographs of tractor, trailer, and log splitter used on perimeter road, Attached to Affidavit of James Edward Weitz - ADMITTED
- #31 Photograph taken in approximately 1995 of the perimeter road in question and shows the road as being much greater than 18 to 24 inches in width, Exhibit "A" to Affidavit of Consuelo J. Weitz in Support of Motion to Allow Plaintiffs' Expert to the Disputed Property and Upon the Undisputed Property of the Defendants' Within 20 Feet of the Disputed Fence - ADMITTED
- #32 Photograph of the perimeter road near the radio station taken in 1995, Exhibit "D," Affidavit of Consuelo J. Weitz in Support of Motion to Allow Plaintiffs' Expert to the Disputed Property and Upon the Undisputed Property of the Defendants' Within 20 Feet of the Disputed Fence - ADMITTED
- #33 Photograph, Exhibit "B-2" taken in December of 2003 and is near the radio Station, Affidavit of Consuelo J. Weitz in Support of Motion to Allow Plaintiffs' Expert to the Disputed Property and Upon the Undisputed Property of the Defendants' Within 20 Feet of the Disputed Fence - ADMITTED
- #34 Photograph, Exhibit "B-1" of the perimeter road taken in approximately December of 2003 - ADMITTED
- #35 Photograph, Exhibit "C-1" of the eastern end of the perimeter road taken in June of 2005, Affidavit of Consuelo J. Weitz in Support of Motion to Allow Plaintiffs' Expert to the Disputed Property and Upon the Undisputed Property of the Defendants' Within 20 Feet of the Disputed Fence - REJECTED
- #36-A Photograph of blue gate - ADMITTED
- #36-B Photograph of blue gate - ADMITTED
- #36-C Photograph of blue gate - ADMITTED
- #37 Photographs A-1 to A-71, pictures of the perimeter road (and a few which capture the view from the perimeter road - such as the radio building) as it appeared in July of 2005, Exhibit "A" to Affidavit of Consuelo J. Weitz in Support of Plaintiffs' Motion for Reconsideration, previously supplied to defendants - ADMITTED
- #40-B 1983 Satellite photograph of S. 8 T. 4 N R. 5 WBM and overlay (color) - ADMITTED

- #44 Affidavit of Todd Green Re: Agreement with Rogers Trust and Re: Weitz Equitable Estoppel Claim, provided to Robert Magyar on September 26, 2005 - ADMITTED
- #45 Letter addressed to Robert Brower by Robert Magyar, dated February 7, 2003 - ADMITTED
- #46 Letter addressed Robert Magyar by Robert Brower, dated March 7, 2003 - ADMITTED
- #47 Letter addressed to Robert Brower by Robert Magyar, dated June 18, 2003 - ADMITTED
- #48 Letter addressed to Robert Brower by Robert Magyar, dated July 17, 2003, provided to Robert Magyar on September 26, 2005, - ADMITTED
- #49 Letter addressed to Robert Magyar by Robert Brower, dated July 30, 2003, provided to Robert Magyar on September 26, 2005 - ADMITTED
- #50 Letter addressed to Robert Brower by Robert Magyar, dated August 1, 2003, Provided to Robert Magyar on September 26, 2005 - ADMITTED

DEFENDANT'S EXHIBITS

- A Deed, Schoepflin to Yeatts & Welch, W ½ NE ¼ , Recorded 10-16-02, Recorder's No. 469910 - ADMITTED
- B Deed, Schoepflin to Gerald and Consuelo Weitz, E ½ +, Recorded 6-17-77, Recorder's No. 287179 - ADMITTED
- C Deed, Yeatts & Welch to Weitz & Sons, LLC, W ½ NE ¼ +. Recorded 2-11-03, Recorder's No. 473230 - ADMITTED
- D Deed, Rogers Trust to Green, SE ¼ , Recorded 8-2-02, Recorder's No. 467896 - ADMITTED
- E Deed, Green to Castle, part of SE ¼, Recorded 2-28-03, Recorder's No. 473688 - ADMITTED
- F Deed, Green to Shook, part of SE ¼ , Recorded 5-15-03, Recorder's No. 475954 - ADMITTED
- G Photo, Pink Stake, Yellow tags in bearing tree, hog wire fence - ADMITTED
- H Photo, Pink Stake, Yellow tag in bearing tree - ADMITTED
- I Photo, Single strand of barbed wire between 2 trees - ADMITTED
- J Photo, Blue Gate and path to the East - ADMITTED
- K Photo, Large tree cut down during July 2003 Fence Building - ADMITTED
- L Photo, Just bladed road at extreme East end - ADMITTED
- M Photo, Bladed road with log barrier and No Trespassing Sign - ADMITTED
- N Diagram of disputed area, Photos attached showing A-I entries on diagram - ADMITTED
- O Monson Survey showing "cattle chute" in NE corner of SE ¼ - ADMITTED
- P Monson Corner Perpetuation and Filing Record - 472243 - ADMITTED
- Q 1933 Aerial Photo - ADMITTED
- R 1933 Aerial Photo enlarged - ADMITTED

S State of Idaho (IDL) Bearing Tree Marker for ¼ corner - ADMITTED
 V V1 through V3 - Legal Descriptions prepared by Priest for "Tracts 1,2, and 4" - ADMITTED
 W Priest Data Collection for Weitz - 9/8/05 - ADMITTED
 X Priest Data - "Weitz Land Descriptions", September 26, 2005 - ADMITTED
 Y Copy Weitz Check No. 10568, \$235.85 - ADMITTED
 Z Landeck Billing Sheet to Weitz dated 7/24/03 - ADMITTED
 AA Aerial Photo (from helicopter) taken by Weitz showing NW corner of SE ¼, And cut in trees for WWP power line - ADMITTED
 BB BB1 through BB3 - Hodge Survey for Weitz and Sons, LLC for land sale, and related Deeds in NW ¼ Section 8 - REJECTED
 DD Declaration of Protective Covenants, Conditions and Restrictions for Green's Addition - ADMITTED
 EE EE1 through EE20 - Photos of Fence Remnants - 11-09-02 - ADMITTED
 FF FF1 through FF10 - Photos of Road after Weitz Heavy Blading - ADMITTED
 GG GG1 through GG6 - Photos of tree damage and slash pile from Weitz Timber Trespass - ADMITTED
 HH HH1 through HH13 - Photos of SE ¼ Views - ADMITTED
 II II1 through II12 - Photos of Survey Markers - ADMITTED
 JJ JJ1 through JJ4 - Photos of Rock Gabions built during July 2003, Fence Building - ADMITTED
 KK KK 0-20N through KK2700-20S - Photos of Alleged Boundary Line taken at 100 foot intervals in September 2005. 0-20N signifies photo taken at the West end 20 feet off the alleged line looking North. 0-20S signifies photo taken at the West end 20 feet off the alleged line looking South. 100-20N signifies photo taken 100 feet from the West end 20 feet off the alleged line looking North, and so on. - ADMITTED
 LL South End Hog Wire Fence - ADMITTED
 MM Line Sign - Top Wire Broken - ADMITTED
 NN Shack - ADMITTED
 OO Slash Pile with Steve Shook - ADMITTED
 PP PP1 through PP5 - Photos of fence remnants North of the survey line on Weitz property - ADMITTED
 QQ QQ1 through QQ10 - Trespass damage on Castle property - ADMITTED
 RR RR 40 - 26 and 27 - 1949 Aerial Photo of disputed area;
 RR 55 - 13 and 14 - 1955 Aerial Photo of disputed area;
 RR 58 - 83 and 84 - 1958 Aerial Photo of disputed area;
 RR 65 - 4 and 5 - 1965 Aerial Photo of disputed area;
 RR 87 - 87 and 88 - 1987 Aerial Photo of disputed area;
 RR 95 - 2 and 3 - 1995 Aerial Photo of disputed area - ADMITTED
 TT Report by Northwest Management, Inc. - ADMITTED
 UU Supplemental Report by Northwest Management, Inc. - ADMITTED
 VV Surveyor Monson's location of fence remnants on Weitz land - ADMITTED

WW December 16, 2002 letter from Magyar to Landeck - ADMITTED
XX Northwest Management Report - Tree Age - ADMITTED
ZZ Photograph - ADMITTED
AAA Diagram of Property Line - ADMITTED
BBB Copy of Plat Map - ADMITTED

will be lodged with the Clerk of the Supreme Court in accordance with the Appellate Rules.

I do further certify that the following exhibits:

#52 Cross Section of Ponderosa Pine Tree - IN EVIDENCE
#53 Cross Section of Ponderosa Pine Tree - IN EVIDENCE
#54 Cross Section of Ponderosa Pine Tree - IN EVIDENCE
#55 Cross Section of Ponderosa Pine Tree - IN EVIDENCE
#56 Cross Section of Ponderosa Pine Tree - IN EVIDENCE

are being retained by the District Court.

I do further certify that the following exhibits:

#7 Road Maintenance Agreement, dated December 27, 2002, Instrument No. 471901 - NEVER OFFERED
#38 1940 Satellite photograph of S. 8 T. 4 N R 5 WBM - NEVER OFFERED
#39 1965 Satellite photograph of S. 8 T. 4 N R 5 WBM and overlay - NEVER OFFERED
#40-A 1983 Satellite photograph of S. 8 T. 4 N R 5 WBM and overlay (black and white) - NEVER OFFERED
#41 1989 Satellite photograph of S. 8 T. 4 N R. 5 WBM and overlay - NEVER OFFERED
#42 2005 Satellite photograph of S. 8 T. 4 N R. 5 WBM and overlay - NEVER OFFERED
#43 Photograph of Schoepflin property and overlay - NEVER OFFERED
#51 Letter addressed to Charles Brown by Robert Brower, dated September 22, 2005 - NEVER OFFERED
T Monson Survey with Priest locations of old fenceline, shack, line tree sign, "side roads", yellow barrel, blue gate, "loop road" and perimeter trail - NEVER OFFERED
U Aerial Photo with Priest overlay of items shown in Exhibit T - NEVER OFFERED
CC WWP survey map showing power line into NE and SE ¼ s Section 8 - NEVER OFFERED
SS SS - 83 Photo of disputed area in 1983 (aerial or satellite) - NEVER OFFERED

YY Northwest Management Report Correction of Page 82 of Exhibit TT - NEVER
OFFERED

are being retained by the District Court as they were never offered at trial.

I do further certify that the following are being sent as exhibits:

Ron Landeck Deposition
Excerpts from the Deposition of Gerald Weitz
Excerpts from the Deposition of Consuelo Weitz
Perpetuation Deposition of Joshua Ritter

in this record and will be lodged with the Clerk of the Supreme Court in accordance with
the Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Court at Moscow, Idaho this 17 day of April, 2008.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Danae Converse
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GERALD E. WEITZ and CONSUELO
J. WEITZ, husband and wife and
WEITZ & SONS, LLC, an Idaho
Limited liability company,

Plaintiffs/Counter-defendants,
Appellants, Cross Respondents,

vs.

TODD A. GREEN and TONIA L.
GREEN, husband and wife,
STEVEN R. SHOOK and MARY E.
SILVERNALE SHOOK, DANIAL T.
CASTLE and CATHREINE C.
CASTLE, and U.S. BANK N.A.,

Defendants/Counter-plaintiffs
Respondents/Cross Appellants.

Supreme Court Case No. 33696

CERTIFICATE OF SERVICE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that I have mailed, by United States mail, one copy of the Reporter's Transcript and Clerk's Record to each of the attorneys of record in this cause as follows:

CHARLES A. BROWN
ATTORNEY AT LAW
324 MAIN STREET
LEWISTON, ID 83501

ROBERT M. MAYGAR
MAGYAR LAW FIRM
201 NORTH MAIN STREET
MOSCOW, ID 83843

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 17 day of April, 2008.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk